



## BOARD OF ADJUSTMENT

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### AMEND MEETING AGENDA

August 8, 2013

4:30 p.m.

*\*Pledge of Allegiance*

#### Regular Agenda Items:

1. Minutes                      Approval of the March 23, 2013 meeting minutes
2. BOA 2013-07                Consideration and action on an appeal request to the approval of the Edgewater Beach Resort PRUD site plan located at 6350 East Highway 39 in the Commercial Valley Resort Recreation Zone (CVR-1) Zone. (Marion Martin, Applicant)
3. Adjournment

*The regular meeting will be held in the Weber County Commission Chambers, in the Weber Center,  
1<sup>st</sup> Floor, 2380 Washington Blvd., Ogden, Utah.*



***In compliance with the American with Disabilities Act, persons needing auxiliary services for these meetings should call the Weber County Planning Commission at 801-399-8791***

Minutes of the Board of Adjustment Meeting held March 23, 2013 in the Weber County Commission Chambers, 1<sup>st</sup> Floor, 2380 Washington Blvd, commencing at 4:30 P.M.

*Present:* Deone Smith, Chair; Nathan Buttars; Rex Mumford; Phil Hancock; Bryce Froerer

*Absent:* Doug Dickson; Celeste Canning;

*Staff Present:* Jim Gentry, Asst Planning Director; Sean Wilkinson, Planner; Scott Mendoza, Planner; Chris Allred, Legal Counsel; Chad Meyerhoffer, Engineering Department; Kary Serrano, Secretary

***\*Pledge of Allegiance***

**Regular Agenda Items:**

**1. Minutes Approval of the February 22, 2013 and March 14, 2013 meeting minutes**

Chair Smith declared the meeting minutes with the noted correction approved.

**2. BOA 2013-04: Consideration and action on a request to vary the lot area requirement on property located at 4770 East 2650 North in the Eden area in the Agricultural Valley-3 (AV-3) Zone. (Elroy J Harris, Applicant)**

Scott Mendoza said the applicant is requesting a variance to the three acre area requirement for property located at 4740 E and 2650 N in Eden. The request is that the Board of Adjustment consider and approve a reduction in lot area that will allow for an existing home to be sited on a new 1 acre lot, rather than the existing parcel which consists of approximately 3.86 acres. The subject 3.86 parcel was created in July of 1995, a remnant of the previously approved (2 Lot) Kimbers Subdivision. When approved and recorded, the Kimbers Subdivision divided two (1 Acre) lots away from the original 5.95 acre parent parcel. The remaining acreage that makes up the subject parcel today resembles the shape of an "hourglass" in that it has two areas that are reconnected by a narrow stem that measures approximately 30 feet wide by 240 feet long. If the variance is granted, the applicant will divide approximately 2.86 vacant acres from the existing parcel and then add it to an existing agricultural and ranching operation that consists of approximately 53.25 acres. According to the applicant, the 2.86 acres has historically been used as a winter feeding area for the ranch, and has never been able to provide a useable or functional "residential" purpose for the existing home.

Chapter 29 of the Weber County Zoning Ordinance states that the "the Board of Adjustment may grant a variance only if the following five criteria are met. The applicant has submitted a narrative meeting the criteria listed. Granting the variance and allowing the applicant to voluntarily exclude the acreage within the northwesterly area of the existing parcel from future density calculations would be consistent with guidance given by the Ogden Valley General Plan which is to limit residential development to one unit per three acres. The General Plan states that the County should promote agriculture and working farms as an integral part of the Valley's cultural heritage. Granting the requested variance would allow the applicant to add the 2.86 vacant acres to the existing and contiguous agricultural and ranching operation making it a functional part of the farm.

Staff recommends that the Board of Adjustment determine the variance request's level of compliance with the applicable variance criteria presented. If it is found that the criterion has been met, the Board may approve the request. If it cannot be found that the criterion has been met, the Board may deny the request.

Rex Mumford asked if the smaller parcel is owned by the same owner as the 53.25 acres. In this 30 foot strip, does it have an open area ditch or is it just the pressure pipe. Scott Mendoza replied that it recently became the same owner. Besides the topography, there is the surface ditch, the open irrigation canal, and the pressurized irrigations system underneath the ground.

Rex Mumford asked when this subdivision was originally created, was it part of that 53.25 acre. Scott Mendoza replied that originally all of this belonged to the same owner. The first division of the larger parcel was for the Junior High; leaving approximately six acres, and then the subdivision in 1995 was recorded, and it pulled approximately two acres out of that six leaving almost four.

Chair Smith asked what is the motivation in taking that piece and joining it with a larger piece? Scott Mendoza replied the motivation would be for the future. There is a parcel that consists of nearly four acres, and the rear acreage isn't useable as far as developing because the access is limited.

Phil Hancock asked if this irrigation canal or ditch has a recorded easement and are there recorded easements in the stem that goes into this property. Scott Mendoza replied that there's a 20 foot right-of-way and a 60 foot right-

of-way shown on this ownership plat that are not part of the request today.

Phil Hancock asked if the density for that remaining property would be recorded with that restriction, so that it could not be used in the future for density calculations. Scott Mendoza replied that those details have not been worked out; but if this Board could approve this in a way that would satisfy the County Surveyor and the Planning Division, that would accomplish what staff is trying to do. If approved on the dedication plat, a note would be made describing all those matters of fact, and a notice could be recorded on the title that could reference the board case.

Chair Smith asked on the Kimber Subdivision which was two one-acre lots, did they receive a variance or were they in a different zone? Scott Mendoza replied yes, it was a different zoning requirement at that time in 1995, and the zoning changed in 1998 to three acres.

Rex Mumford said Exhibit B.3.6 states, *"granting the variance is essential to the enjoyment of substantial property rights possessed by other properties in the same zone,"* and on the third bullet, *"while the land provides no value for the owner of the home, it would provide substantial value to the family."* If the property sold with the home, it would lose the Green Belt status and would be taxed as residential property which is the same as every other 3.86 parcel in the county. You can't get a Green Belt unless you have a 5.25 acres and the only reason they have Green Belt is because the adjacent property is the same ownership.

Elroy J Harris, Executor for Melvin R Clark Trust and a resident of Huntsville, said he wanted to clarify some the questions with some background information. The estate of Melvin Clark's father was divided into three parcels; one for his sister, one for his father, and the school decided not to build on all of it because of the canal and it was not feasible for them to own both sides of the canal property and they ended up with a 5.86 property. Later that property was divided into two other lots which were for the children of Kimber Subdivision. It was always considered that the farm was 57 acres with a house on it. For tax purposes the county obviously recognizes that it's a farm and that's the reason it gets Green Belt on the 3.86 because it's not considered part of the house, but part of the greater farm. When the laws changed in 2005, it's the only parcel of ground that is to the east side of the river and that's where it becomes critical for feeding in the winter time. Typically when you buy property with three acres, there would be some feasible access to build an out building or be able to drive back and forth. This would not have the same rights that another person would enjoy because it doesn't have the same access that another person would have connected to the property. It was never intended to be with that property, it was intended to be part of the farm. Part of the estate has a loan going under foreclosure, so they need to sell it. The potential buyers want to buy the house but not the land because the value of the land is more than the house.

The house that is connected to the property is also used as a barn and farm operation and it is essential to the family that this be retained by the family. While this is currently owned by the trust, the house would be sold to a different individual, and the rest would be connected to the farm. The proposal is a win/win for both the future land owners and current landowners of the farm. Let's do the right thing and adjoin it to the farm where it will remain in Green Belt, in agriculture, and if it was ever developed, it wouldn't go into the calculations.

Bryce Froerer asked how they would access the 52 acres. Elroy Harris replied on the west side of the subdivision there is about 66 feet of property on the south side of the river. If this property line was truly separated with the house, that would leave a 60 foot strip going all the way back, and that would be too narrow to use in any functional way. That gives access for the farm to the property back there, and when it is combined together it is connected to the bigger part where it's separated, and becomes an odd shaped unusable property. There is a 66 foot right-of-way that was given to him to access his property which adjoins the Melvin R Clark farm.

Chair Smith asked who currently lives in the home and is it over encumbered with payments that have not been made. Elroy Harris replied no one lives at the home, which was the home of Melvin R Clark. The payments are current and will go in foreclosure when the bank runs out of funds at the end of June.

Chair Smith asked if the 52 acres are currently encumbered. Elroy Harris replied that currently all of the property is encumbered and that he couldn't do anything with the property until the debt has been satisfied. The only clear

way to satisfy the debt would be to sell the house; he can't sell the house if it's connected to the acreage, and it's not economically feasible for the buyer because the land is worth more than the house. Right now it's held up in a trust that can't be transferred until the debt is satisfied.

Chair Smith said that this is purely an economic decision, and this makes the all the other requirements null and void. Phil Hancock said he takes a different view; there is a reasonable solution that does not in any negative way affect the general plan, and helps the citizens of the county in making this change. He is in favor of this as a solution and would like to see staff be willing to work with the homeowners to resolve issues and problems. He understands the economic situation, but he doesn't believe the economic considerations here are large enough to merit consideration of this application.

**MOTION:** Phil Hancock moved to approve BOA2013-04 based on the findings that it does not degrade the general plan, that there be some sort of covenant or recording with the land that the density requirements be met, and that the additional ground cannot be used as density for any other surrounding property, whether it's joined into it or not to increase the density of the application. The unusual topography, irrigation canal, easements, and the shape of the property all are negative; and that the owner's response to the criteria items of 1-5 are justified. Nathan Froerer seconded.

**DISCUSSION:** Rex Mumford said the key to this is that restrictive note as part of your motion is an essential part of this so that they don't change the intent of the density. Phil Hancock said its right next to an approved two acre lot. Rex Mumford said that recently the county adopted an ordinance that boundaries within a subdivision could change as long as it didn't change what the zoning would have been at the time the subdivision was created and this goes along the same lines and he asked Mr. Mendoza if he had checked into that. Scott Mendoza replied they did look at that and the subject property is not within the subdivision. They interpreted this situation to be the subject parcel to be outside the subdivision so it wouldn't qualify. Chair Smith said that she agreed with a lot of things that were said and agrees that she would want our County and our Board to work with people and help them get through any of their issues that they might have. However, there is a three acre minimum zoning here, and the applicant stated that this is an economic matter that has to do with money. This sets a precedence giving an out for anybody else that wants to claim they are having a hard time. Here is an example of when this Board allowed this person to take this amount of property off, and they now want the same thing. This could lead to some lawsuits with this property that has been used for years, and now it's an economic hardship. Phil Hancock said that this Board was told on two occasions that the Board of Adjustment decisions do not set precedence. Chris Allred said that it doesn't in itself set a precedence meaning if you make a bad decision, it doesn't mean that you are required to perpetuate an incorrect decision so no it's not like a court case where you establish precedence. Phil Hancock said every decision has an economic side to it just because it's not at the forefront; there is not a decision made by this Board that does not affect someone or property economically. Chair Smith replied that typically that is not the main objective and clearly here, that is a main objective. Nathan Froerer said one thing that helps the applicant is the topography with the river, the canal, the ditch, the pipeline, and using those things could show that this isn't just economic, there are other hardships.

**VOTE:** A vote was taken with Bryce Butters, Phil Hancock, Rex Mumford, and Nathan Froerer voting aye. Chair Smith voted nay. Motion Carried (4-1)

**3. BOA 2013-05: Consideration and action on a variance from the zoning ordinance requiring custom exempt meat cutting to be located on and with direct access from a collector or arterial road located at 3788 E 4100 N, Liberty owned by Richard Ralph & Rulon Kent Jones in the Agricultural Valley-3 (AV-3) Zone. (Garet Jones, Applicant)**

Jim Gentry said the applicant is requesting a variance from a requirement from the zoning ordinance to come off from a collector or arterial road. The applicant has applied for a Conditional Use Permit (CUP) for a Custom Exempt Meat Cutting operation located at 3788 E 4100 N in Liberty. The property is zoned Agricultural Valley (AV-3) which allows the use as a conditional use with exceptions. The preference is to access his property from 3800 East at a location this approximately 300 feet north of the intersection of 3800 East and 4100 North, and has direct access to 4100 North, which is a collector road, from his property. The conditional use site plan shows a proposed driveway access lying approximately 20 feet west of the intersection of 3800 East and 4100 North. However, the Weber County Engineering Division has stated that this location is possibly unsafe because of its close proximity to the intersection of 3800 East and 4100 North. This location was selected by the applicant because there is a steep

hill 44 feet from the edge of 3800 East. The Weber County Engineering Division did a traffic count on 3800 East (156 trips in a 24 hour period) and 4100 North (605 trips in a 24 hour period). The traffic on both is significantly below the carrying capacity of the roads. There are some other issues that need to be addressed in the CUP such as locating his parking in the back. Staff recommends approval of the variance request for access off of 3800 East, based on its compliance with the applicable variance criteria discussed in the staff report. They have a staff member in attendance from the Weber County Engineering Office if you have questions.

Rex Mumford said the dangerous element identified by the engineer would actually be if someone was making the turn onto 3800 East or turning on to the subject property. Jim Gentry replied that is correct and that 4100 N. has an inverted curve and the hill that goes up so it is a dangerous situation where they access off of 4100 N.

Rex Mumford asked if there would be no other access to the meat facility and Jim Gentry replied this would be his access and his parking. The variance is only for access for this location and that is what is being discussed, not the site plan or the conditional use permit which will go to the Planning Commission once this variance is approved.

Chair Smith asked if this would be the same entrance previously used in the past. Jim Gentry replied that in the past this entrance on 4100 N. was used and then the semi trucks would come and block the intersection. To avoid that situation; they have a new access with parking in the field.

Garet Jones, applicant, and an Eden resident said that he is requesting a variance on a collector road. It's been difficult to get access at the proposed location where he wants the access on 4100 N. and the Engineering Department wants it 200 feet from the intersection. It is also easier to access on 3800 East due to the Hill. In reference to the conditional use permit; this road has low traffic use, usually about two employees per day, and there are two to four clients that visit the business per day and in many cases there are no clients. He has worked closely with Planning and Engineering Department.

Rex Mumford asked if 3800 East was wide enough for the semi trucks or any traffic proposed. Garet Jones replied yes but that they could eliminate the use of semi trucks.

Nathan Buttars asked for clarification of Mr. Jones' business and why is it in this area. Garet Jones replied that they have an elk farm, an underground building, and a plant to process and harvest animals. He was issued a special use permit from the county for the butcher shop that already existed there.

Richard Rohde, who resides in Liberty, said he was appalled when he saw the staff report and the consideration of the requirements that the entrance be on 3800 East. There is not a lot of traffic on 3800 East but there are a lot of children; twice in the morning and evening, waiting for a bus that park in this area. There is a 500 foot access for frontage on 4100 N. and they want to force commercial traffic where children walk. He gave a demonstration with pictures and an explanation for his presentation and added that this property doesn't have a hardship and it meets the requirements for the ordinance.

Georgia Rohde, who resides in Liberty, said the applicant wants to be allowed access from 3800 East to his meat cutting business. This is wrong because 3800 East is a road where commercial traffic is not allowed. Each of her neighbors bought their homes and properties here because 3800 East is a quiet dead end street with only residential traffic on it. The nearest residences to the Jones's facility had noise pollution from the cutting business as well the sight of animal carcasses coming loaded in vehicles at all hours. Their property values and safety would be adversely affected if the Mr. Jones is granted the variance to the zoning ordinance and allowed to run his commercial business again off of 3800 East. The biggest issue here is safety to the children that ride the bus every morning and evening at the corner of 3800 East and 4100 N. This is absolutely not acceptable to the residents close to 3800 East.

Sandra Tuck, who resides in Liberty, said this application was submitted on May 13 and the affidavit by the home owner stating that he wanted a representative was not signed. We were notified on May 19 that the meeting would be on May 23. Mr. Barry is one of the two most affected by this and due to his business that is in a third world country, he was not able to attend because of the short notice. The other person is Clay Poulter who has

been living and caring for his ill father and was unable to attend because of the short notice. The road on 3800 East where he wants to go in, the septic system comes from there and down the hill, and their parking is where the drain field is located, not 200 feet away from Clay Poulter's home. The semi's that come down have to pull into Mr. McFarland's or Mr. Poulter's yard.

Cal Stevens, who resides in Liberty, said that he was disgusted when there was a commercial development that was going in there. Mr. Rohde presented a situation where he would like to move the mess that he has on 3800 East across the street from her on 4100 N. and he would oppose that also because the road is steep. If that is the alternative, then he would suggest scrapping the whole thing.

Nick Marriott, who resides at the Preserve, said that he uses 4100 N. twice a day, and when this was going on there was really no noticeable change that he could see. There is not a lot of traffic there and he didn't see a problem.

Jim Gentry said that eventually 4100 N. is going to be connected to Wolf Creek Drive and when development begins it will be a small segment. Eventually they will put in a major road the majority of the way to Wolf Creek. The only issue that they are addressing is the variance be granted or not, and it would have to go back to the Planning Commission with the septic system issue and some of these other issues to be addressed. Mr. Jones is planning on taking the vehicles off of 3800 East and not parking them there. A representative from the Weber County Engineering Department is here if you have some questions for him.

Chair Smith asked if all of the notices were mailed out in a timely manner. Jim Gentry replied that there is a statement in the Board of Adjustment that states that the application has to be in 30 days prior. The Planning Staff has the ability to waive that requirement, and it was waved waived for this and the next case. The notices were sent out the day the packets were sent out to the Board of Adjustment. There is no notice requirement by state code; the only notices that are required are for amended subdivisions, so notices were sent as a courtesy.

Chair Smith asked for clarification on the total amount of frontage. Jim Gentry replied that there is 500 feet of frontage and staff and engineering looked at another location. There are storm water and drainage lines that would have to be relocated and a hill that the Planning Commission and Engineering Departments were concerned about. The parking lot would be on back of Mr. Berry's property line based on the directions given by the Planning Commission. This is the best location and that is what the applicant is requesting.

Nathan Buttars asked if the property values on 3800 East would be affected by the proposed entrance. Jim Gentry replied that would a question for the assessors to address. There is a very minimal traffic increase by this and the roads right now can handle up to 2,000 vehicles per day. This will only add 6 to 10 vehicles per day so it wouldn't have a significant impact.

Rex Mumford asked in reference to the traffic count is that on an annual basis and if Mr. Jones is approved, would that be seasonal or year around? Jim Gentry replied the traffic count was just done for a 24 hour period. The applicant could do it year around. It's an agricultural use but could be considered commercial with the use in agriculture in the agricultural zone. The ordinance was amended to add that use in the zoning ordinance and that now gives him the option to cut livestock or any wild game. Right now, Mr. Jones' intention is mainly to cut up the elk that comes off of his elk ranch.

Chad Meyerhoffer, Engineering Department, said to clarify he is not a license engineer nor does he have a background in Traffic Specialty. He has conversed with the engineers in the department and none of them have expertise or specialty just in traffic engineering, but a lot of the information that they use is in the Astro Book.

Rex Mumford indicated that 3800 East is not a collector road, but he asked if it was width wise narrower than 4100 N. Chad Meyerhoffer replied that he would have to and double check it but both roads would have about 24 feet width of asphalt on them. The right-of-way width on 4100 N. is proposed to be a little bit larger right-of-way width than 3800 East. There is probably about an 80 foot right-of-way on 4100 N. and probably 60 or 66 foot on 3800 East.

Rex Mumford asked in your opinion coming off of 4100 N. is more hazardous than going off of 3800 East. Chad Meyerhoffer replied that according to UDOT, they like to limit the amount of accesses that they do have on the main road. So it is better with the idea that the more traffic you have going back and forth; the more access, the more chance you have people of turning left or accidents occurring.

Nathan Buttars asked if he could address the bus and the kid traffic. Chad Meyerhoffer replied he was not sure that he could address that issue, but if there is an access or a bus stop with more kids and traffic there, that could be a hazard.

Chair Smith asked if the applicant came up with this plan or did the Engineering Department. Chad Meyerhoffer replied the applicant came up with the plan. The Engineering Department was asked for consultation on what would be a safe option off of that access right next to the intersection. We looked at it and found that it is not a safe access and most of our conversation has been with the Planning Department.

Garet Jones, Applicant, said that he would address some the questions that were brought up. As far as the seasonality of the business, they are talking six trips a day and that would be in the fall months. The other animals that would be butchered, the maximum would be a few in a week. This is a new access and all those pictures with the semi traffic are not relevant. As for the hill that has always been there, it wasn't pushed up as it was mentioned. In reference to Mr. Marriott's point, if you are standing there taking pictures while the operation is going on, and are able to get pictures of a truck with an elk on the back, a normal passerby would not see one or more trucks a day dropping off an elk. This does not go on 100 times a day when the children are walking to the bus.

Nathan Buttars said so in your opinion the kids at the bus stop, kid traffic on that road, that wouldn't be affected by the access road. Garet Jones replied that is correct.

Chair Smith asked if it was feasible to have a delivery period for drop off and pickups during a certain period of time. Garet Jones replied yes and that would be something that could be discussed with the Ogden Valley Planning Commission.

**MOTION:** Rex Mumford moved to approve BOA 2013-05 granting a variance from the zoning ordinance requiring the access to be directly from the collector and allow it to be on the 3800 East local road for purpose of accessing the Jones property. Phil Hancock seconded.

**VOTE:** A vote was taken with Chair Smith, Nathan Buttars, Rex Mumford, and Phil Hancock voting aye and Bryce Froerer voting nay. Motion Carried (4-1)

**4. BOA 2013-06: Consideration and action on a variance request for a new garage to encroach 15 feet into the required 30 foot front yard setback on Lot 1 of Montgomery Ranch Subdivision Phase 1 located at 7869 East 1300 North in the Agricultural Valley-3 (AV-3) Zone. (Larry & Denise Montgomery, Applicants)**

Sean Wilkinson reviewed the staff report and stated that the applicants have stated that they cannot locate the garage further to the south due to the location of the existing septic tank and leach field. They further state that locating the garage to the west of the dwelling would block their front windows and doors and would disrupt the look and integrity of the neighborhood. Due to these conditions, the applicants believe that the garage cannot meet the 30 foot front yard setback required by the AV-3 Zone. Therefore, they have requested this variance in order to obtain permits to build the garage.

The applicants have submitted a narrative addressing the above criteria, which is attached as Exhibit A. The Planning Division's analysis and findings are discussed below.

a. The applicants believe that an unreasonable hardship exists due to the location of the existing septic tank and leach field, and that locating the garage west of the home would block their front windows and doors and disrupt the look and integrity of the neighborhood. While these are legitimate concerns, they are not peculiar to this property and could apply generally throughout the neighborhood. All of the dwellings in this neighborhood were required to locate a septic tank and leach field in an appropriate area according to Health Department requirements and meet applicable yard setbacks for structures.

Unfortunately, structures cannot be built within the lot area occupied by the septic tank and drain field on any of the lots in this neighborhood or in Weber County.

The applicants stated in their application that they were required by Health Department employees to locate the septic tank and leach field in its current location, but the application did not contain any supporting information. The applicants may have additional information that could distinguish this lot from others in the neighborhood and show that an unreasonable hardship exists, but any new information will have to be provided at the May 23<sup>rd</sup> meeting for the Board's consideration.

b. This lot is different from most of the lots in the AV-3 Zone because it is a flag lot with limited frontage on a road. The limited road frontage does not affect the location of the septic tank and leach field, nor does it require the dwelling to face a certain direction. Therefore, these hardships mentioned by the applicants cannot be considered special circumstances, unless additional information is provided as discussed previously. The applicants make a valid point in explaining that the dwelling was built facing west to match others in the neighborhood and preserve uniformity, but again, this circumstance does not relate directly to the hardship, as the garage was not planned when the dwelling was built. This lot has the same privileges as other lots in the AV-3 Zone that are required to meet setback requirements and avoid the septic tank and leach field area.

c. The lot is not being deprived of any property rights possessed by others in the AV-3 Zone. The applicants can still build a smaller garage in the same area that meets the 30 foot front yard setback, or the garage can be built in another location on the lot. The 30 foot front yard setback has not changed since 1994 when the dwelling was built.

d. Flag lots are exceptions to the typical lot frontage requirements and flag lot front lot lines are often located several hundred feet from the road. The flag lot front yard setback also provides for safety by allowing enough area for an emergency turnaround location or other safety measures in an unobstructed area. The Board should consider the safety, aesthetic, and other factors in determining whether or not the variance will substantially affect the general plan or be contrary to the public interest.

e. This variance request is not an attempt to avoid or circumvent the requirements of the Land Use Code. Rather it is an attempt to preserve uniformity and the general look of the neighborhood, while allowing the applicants to improve their lot. Based on the evidence submitted, the Board must determine if sufficient evidence has been presented. If there are unreasonable hardships caused by special circumstances related to the property then substantial justice would include approving the variance.

Detached accessory buildings are allowed as a permitted use in the AV-3 Zone. Staff recommends denial of the variance request for a new garage to encroach 15 feet into the required 30 foot front yard setback. The recommendation is based on the applicants providing insufficient information to prove that unreasonable hardships and special circumstances related to the property exist. The applicants are not being denied the right to build a garage on the property, and a smaller garage meeting the front yard setback could be built in this location or the same garage could be built elsewhere on the property.

Nathan Buttars asked for clarification of a flag lot and the purpose. Sean Wilkinson replied a flag lot is typically used when there is sufficient area to create a lot but there is not sufficient frontage to meet the 150 ft lot width on the road requirement of the zone. This used to come before the Board of Adjustment but currently it's an administrative decision. When this was approved by the Planning Commission; the purpose was to all the development of the lots that didn't meet frontage requirements, and still meet area requirements. It would make sense to grant as an access exception and allow them to build rather than requiring a road to come in and serve the lot.

Nathan Buttars asked what would be the purpose of the front line lot of a flag lot and why does that matter? Sean Wilkinson replied that the ordinance states that and they have to follow that. As far as why, that is because that is where the access comes from the road. That is where the flag lot actually opens up to meet the width requirements of the zone, it makes the most sense to call that the front lot line, and the closest lot line to the road where access comes from.

Chair Smith asked if the applicant doesn't have an established line; do they get to pick and choose which way it faces, and where it's going to be. Chris Allred replied that part of the reason that it was established as a front lot line in a place like that is so that others who build in a subdivision and nearby will know what they are getting into. They will know objectively when they build what the setbacks are going to be within that lot. It may not have any more practical value than that but it will put everyone else on notice of what they can expect as far as setbacks.

In response to a question by Nathan Buttars, Sean Wilkinson replied that is correct that at least two of the homes face to the south and for these homes they both have access from the west. Staff does understand the applicant's argument to keep the uniform of the neighborhood facing the house to the west, unfortunately based on what the ordinance says, staff can't find where that is an unreasonable hardship.

Rex Mumford asked if this is considered a large accessory building, and if it's in front of the home, and by definition this is, it has to have the characteristics of the home. Are there any characteristics that are being required by the county? Sean Wilkinson replied no, the building was completely designed by the applicant and there are renderings of what the building would look like.

Phil Hancock said as he recalled an accessory building has to be 10 feet behind the back of the house. Sean Wilkinson replied it depends on the zone and in some zones it is 6 feet and in other zones it is 10 feet. They can also locate the building to the side or the front as long as they meet other requirements.

Phil Hancock asked if that still does not meet the distance to the back of the house. Sean Wilkinson replied that is correct, they still have to meet the setbacks from property lines but as far as being behind the home, they do not have to meet that setback because of these other restrictions that are placed on the larger buildings.

Brian Montgomery, the applicant's representative and a resident in Huntsville, said to clarify more on this land, all the family resides on this land with their own homes and it is maintained as a family farm. The reason for these flag lots, is that there is the barn where they store their equipment, and they didn't want to cut through their barn to get to the house. They own property all the way back to the canal and to the road. As far as the flat lot, he did not know anything about the setbacks when he built the house; he wanted it facing like everyone else, and the contractor told him that it had to be 40 feet back. The reason their access being that way to the back of the property is for their farm equipment being used and maintained. As for the Leach Line Sewer System, he had asked where would be the best place to put it, and was informed he should put it right behind the house with the three laterals going to the north, but he didn't have any written documentation for that. If he puts his garage 30 feet off, it will be behind his house, and right along those leach fields where he doesn't want to mess with that.

Chair Smith asked if he owned that land behind the property, why didn't he redraw his lot line 15 feet back. Brian Montgomery replied that he didn't know that he could do that.

Bryce Froerer said the problem wasn't the property to the east but the property to the north. Brian Montgomery discussed this with his brother in law Brian Knowles, who didn't have a problem with that 15 feet. So between his 10 feet and with the 15 feet, that makes a total of 25 feet of frontage for the flag lot. He is still about 600 feet off of the main road.

Rex Mumford asked on Exhibit C you show your leach field running out, are those actually to scale? If those leach field stops at the edge of your house, you already have 15 feet and you only have to move the garage another 15 feet. Brian Montgomery replied that he was just guessing, but it's close to that so if they put it 30 feet, it's going to be right on the edge, and he just didn't want a big space between his garage and the property line. That is why he wanted to center it, if he was given 15 feet, then he wouldn't have to do any of that.

Sean Wilkinson said with the flag lot being so far off the road, this Board may want to look at lot lines, and see what practical purposes could be served. The ordinance definition is what it is as far as what that lot line is but you have to consider the criteria and if it meets the criteria.

Phil Hancock asked if the applicant had applied for a variance for the location of the front property line that might have been a possibility. Chris Allred replied that was what he was thinking during the discussion whether it would be possible to apply for a variance from that provision to change the frontage. The way the house is facing to the west would it still meet setbacks? If they were to be granted a variance from that requirement and all the setbacks

were shifted then everything would fit in the setbacks. As far as the rationale for setbacks, the neighbors who are his family aren't being imposed upon.

Nathan Buttars asked if they could amend their application tonight orally. Chris Allred replied no because it doesn't put others on notice that might have an interest. It seemed to him that there ought to be a mechanism to make that work, whether they would have them reapply so they can look at that, and say can they grant a variance for frontage. He was not sure why they couldn't because they would be asking for a variance from a land use ordinance and it would meet all those other criteria.

Phil Hancock said that he didn't see how they could approve the way the applicant has it. Even though he understands their reluctance, the septic tank is an economic hardship, and if that is a conventional system he would have to vote against it. But if there is a way they could look at moving the front yard setbacks at the front of the house.

Sean Wilkinson asked Legal Counsel in the ordinance it does say if the variance is granted, the Board can impose other conditions that would meet the requirement of the zone or meet the intent of the zone. As part of this variance, could something like that be imposed rather than coming back? Chris Allred replied leaning more toward yes, and it seemed to him that is not an unreasonable way of looking at things for the Board in their position.

**MOTION:** Nathan Buttars moved that the applicants amend their application so that the front line of their lot faces west and by doing so approve their application. Bryce Froerer seconded.

Chris Allred said that was more of a recommendation and that they didn't necessarily need a motion or there could be a different motion made to be addressed.

**DISCUSSION:** Rex Mumford said the language would state that they would change their frontage to orient with the west boundary. Nathan Buttars said he would accept that amendment. Chris Allred asked if they are asking the applicant to come back? Chair Smith asked if you are asking the applicant to come back or are you approving that as long as they amend the paperwork. Nathan Buttars replied that they approve it tonight as long as they amend the paperwork. Chris Allred said that he was not sure that was going where Mr. Wilkinson had suggested and maybe that should be made clear before you vote on that motion.

**AMENDED MOTION:** After several amended motions, Nathan Butters moved to grant this variance request and impose a condition that the front lot line be now the west lot line rather than the north lot line and that setbacks on that west lot line be maintained in the future as a front lot line with the 30 ft setbacks or whatever other setbacks apply to the lot line in the future and that this be recorded on the title. Bryce Froerer seconded.

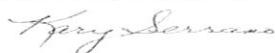
**VOTE:** A vote was taken with all members present voting aye. Motion Carried (5-0)

5. **Training: Making Motions:**

Sean Wilkinson said that there was no training at this time.

6. **Adjourn:** The meeting was adjourned at 6:45 p.m.

Respectfully Submitted,



Kary Serrano, Secretary,  
Weber County Planning Commission



## Staff Report to the Weber County Board of Adjustment

Weber County Planning Division

### Synopsis

#### Application Information

**Application Request:** Consideration and action on an appeal request to the approval of the Edgewater Beach Resort PRUD site plan located at 6350 East Highway 39.

**Agenda Date:** Thursday, August 08, 2013

**Applicant:** Marian Martin, appellant; Michael Malmborg and Douglas Taggart agents

**File Number:** BOA 2013-07

#### Property Information

**Approximate Address:** 6350 East Hwy 39

**Project Area:** 13.08 Acres

**Zoning:** Commercial Valley Resort Recreation Zone (CVR-1)

**Existing Land Use:** Vacant

**Proposed Land Use:** Residential and Commercial

**Parcel ID:** 20-013-0020 and 20-134-0005

**Township, Range, Section:** T6N, R1E, Section 13

#### Adjacent Land Use

<b>North:</b>	Pineview Reservoir	<b>South:</b>	Residential
<b>East:</b>	Residential	<b>West:</b>	Agriculture

#### Staff Information

**Report Presenter:** Ben Hatfield  
bhatfield@co.weber.ut.us  
801-399-8766

**Report Reviewer:** RS

### Applicable Ordinances

- Weber County Land Use Code Title 102 (Administration) Chapter 3 (Board of Adjustment)
- Weber County Land Use Code Title 104 (Zones) Chapter 11 (CVR-1 Zone)
- Weber County Land Use Code Title 106 (Subdivisions) Chapter 1-5 (Approval Procedure)

### Background

The Planning Division via the Weber County Commission has received a request by Marion Martin to appeal the approval of a site plan (CUP 2012-02 and CUP 2013-08) for the Edgewater Beach Resort PRUD (Planned Residential Unit Development) by the Ogden Valley Planning Commission (OVPC) and the Weber County Commission (WCC).

Marian Martin owns property to the west of Edgewater Beach. The two properties have been separated since the late 1800's by a roadway (6300 East).

The 13.08 acre Edgewater Beach property is located in the CVR-1 zone and received in 2003 approval of a plan to develop the site owned by Dr. Catanzaro. Based on that design the two commissions required the site to not build within 50 feet of 6300 East. In 2009 a default and subsequent foreclosure occurred and Celtic Bank took ownership of the property. Since then Celtic Bank has proceeded to prepare and design for development of the site.

In March of 2012 the OVPC reviewed and recommended approval of a new site plan that was significantly different from the previous one. As the property is in the CVR-1 Zone certain minimum yard regulations (setbacks) are required for development, particularly for this parcel 30 feet in the front, 100 feet in the rear due to Pineview Reservoir, and 20 feet on either side. However, due to the request for this development to be a PRUD flexibility is allowed to setbacks "to encourage new and imaginative concepts in the design of neighborhood and housing projects in urbanizing areas." Therefore on March 26, 2012 the OVPC (Vote 7-0) found that due to this new design that the location of the buildings may be in the new locations based on it being a superior design than conventional development. The WCC on April 10, 2012 did the same, and

approved the new design (CUP 2012-02). Since no appeals were presented at that time the builder or developer has the entitled rights to proceed in developing per the plans that were approved.

In March of 2013 Celtic Bank after working with engineers about access to the development requested to vacate 6300 East and subsequently amend part of the Edgewater Beach site plan by merely eliminating any access proposed onto the roadway and providing turnarounds within the development. With this amendment the style, size, and location of any of the buildings were not being affected. The OVPC and WCC approved the vacation of 6300 East and CUP 2013-08.

## Summary of Board of Adjustment Considerations

Title 102 (Administration) Chapter 3 (Board of Adjustment) of the Weber County Land Use Code states that one of the duties and powers of the Board of Adjustment is to act as the appeal authority from decisions applying and interpreting the Weber County Zoning Ordinance and Zoning Maps.

### Decision Criteria and Standards:

1. The Board of Adjustment shall determine the correctness of a decision of the land use authority in its interpretation and application of the Weber County Zoning Ordinance and Zoning Maps.
2. The Board of Adjustment may hear only those decisions in which the land use authority has applied the Weber County Zoning Ordinance or Zoning Maps to a particular application, person, or parcel.
3. The appellant has the burden of proof that the land use authority erred.
4. All appeals to the Board of Adjustment shall be filed with the Planning Division not more than 15 calendar days after the date of the written decision of the land use authority.
5. Appeals to the Board of Adjustment shall consist of a review of the record. In cases where there is no record to review, the appeal shall be heard de novo.

### Planning Division Analysis and Findings

Marian Martin has filed an appeal of the land use authority's decision, which is attached as Exhibit B. The Planning Division's analysis and findings have been categorized and are discussed below.

1. **Was the appeal filed in a timely manner?**
  2. **Was the notice provided per statute?**
  3. **A new review of 2012 decisions**
1. **Timeliness.** The requested appeal regarding decisions made with CUP 2013-08 and CUP 2012-02 was submitted to the WCC on June 12, 2013. Appeals of land use decisions must be filed within 15 days after the date of the written decision. The appellant in this case did file an appeal within 15 days of CUP 2013-08. However, the petitioner is not challenging decisions made regarding CUP 2013-08. Rather, the petitioner is attempting to appeal decisions made over a year ago in connection with CUP 2012-02. Because no appeal of decisions made in CUP 2012-02 was filed within 15 days of those decisions, the BOA should not review those issues. A subsequent appeal regarding a portion of an approved site plan cannot retroactively be appealed.
  2. **Notice.** Staff has included additional information regarding this issue as Exhibit A. The appellant argues, essentially, that her appeal of CUP 2012-02 is nevertheless timely because she did not receive proper notice of the CUP 2012-02 hearings. Weber County ordinances do require that notice of a proposed subdivision be mailed to record owners of each parcel within 500 feet, not less than seven calendar days before the planning commissions' public hearing on the proposed subdivision.

The petitioner asserts that she in fact did receive notice (sent March 20, 2013) of the March 27, 2012 meeting, but that it was postmarked March 23, 2012. She also acknowledges that "This letter was delivered to Ms. Martin in Montana. . ." Whether this provided sufficient time for the petitioner to appear or provide written comment is debatable. But what is certain, is that she did have notice of the 2012 meeting(s) prior to the meeting(s), and she failed to appeal within 15 days of the 2012 written decision(s). Therefore, the petitioner has failed to appeal 2012 land use decisions in a timely manner. Again she did not contact Planning Division Staff until receiving the notice in March of 2013. Being that the Weber County Land Use Code's process for a PRUD application is required to be

reviewed by both the Planning Commission at their regularly scheduled date and subsequently a few weeks later by the Weber County Commission, it is apparent that adequate time was allowed for an appeal to be made.

3. **A new review of 2012 decisions.** The BOA should not review or evaluate the 2012 land use decisions unless it first determines that the appeal of those decisions is timely. If the BOA does determine that the appeal is timely, then the BOA should apply the Decision Criteria and Standards outlined above in the staff report. The Board of Adjustment should not review the design and determine whether additional setbacks are to be enforced, but merely review the record of the site plan applications to determine if applicable ordinances were followed. Again by nature of the design being a PRUD, flexibility is allowed by the Planning Commission and County Commission in determining if the design is superior to conventional development patterns.

Legal representation for Marian Martin has submitted an appeal attached as Exhibit B. A rebuttal has been submitted by representation of Celtic Bank attached as Exhibit C.

### **Conformance to the General Plan**

Approval or denial of the requested appeal will not substantially affect the goals and policies of the Ogden Valley General Plan.

### **Conditions of Approval**

- Compliance with any additional conditions imposed by the Board of Adjustment

### **Staff Recommendation**

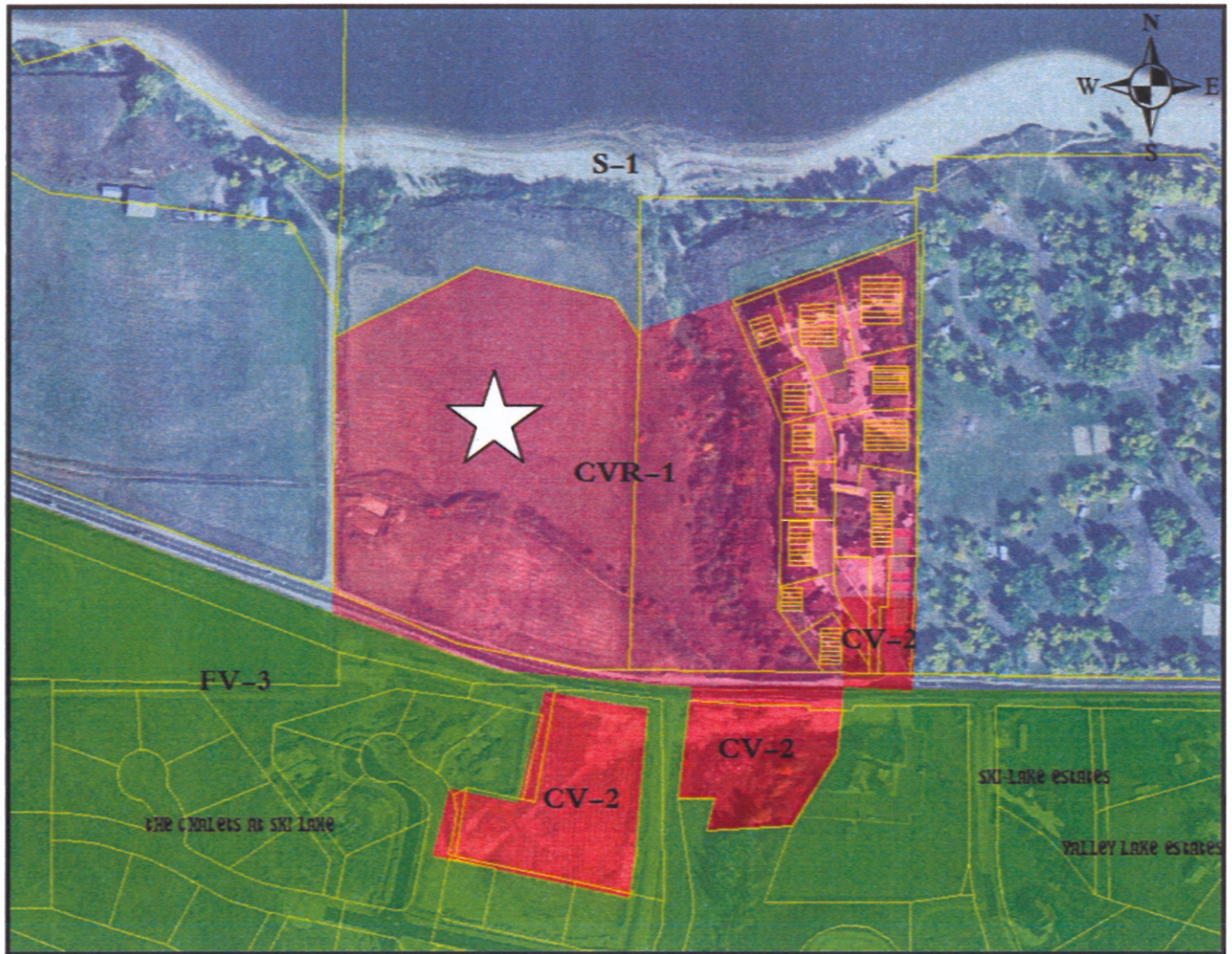
Staff recommends denial of this appeal of a site plan (CUP 2012-02 and CUP 2013-08) for the Edgewater Beach Resort PRUD by the Ogden Valley Planning Commission (OVPC) and the Weber County Commission (WCC) The recommendation is based on:

- The appellant's untimeliness in filing an appeal in 2012 for decisions that were made in 2012.
- The appellant's admission that notice was received prior to the meeting, allowing more than the 15 days of time in which to make an appeal.
- A superior design as determined by the OVPC and WCC, was presented which met the criteria for development and did not require any additional setback requirements from adjacent property owners.

### **Exhibits**

- A. Staff's response to State Code issues
- B. Appellant's Request
- C. Celtic Bank's Rebuttal

# Map



# Exhibit A

## Staff's Response to State Code Requirements

The appeal has stated that a notice was not received pursuant to the following portions of the Utah State Code (17-27a-204, 205, 206, and 207). However, appellant's representative does not mention 17-27a-209 which states:

### 17-27a-209 Notice Challenge.

If notice given under authority of this part is not challenged under Section 17-27a-801 within 30 days after the meeting or action for which notice is given, the notice is considered adequate and proper.

As clearly 30 days has passed since the March and April 2012 hearings, and that notices were sent in a timely manner, a notice of decision written, and minutes of the meeting approved; this challenge should be denied as it is untimely. Staff below has addressed the applicability of claims.

17-27a-204 sets standards regarding notices of public hearings to consider changes to the General Plan. Conditional uses, PRUD's or site plan approvals are not modifications to the General Plan, 17-27a-204 is therefore not applicable.

17-27a-205 sets standards regarding notices of public hearings to consider changes to the land use code. Conditional uses, PRUD's or site plan approvals are not modifications to the land use code, 17-27a-205 is therefore also not applicable.

17-27a-207 sets standards regarding notices for an amendment to a subdivision and only applies to residents who own property within that subdivision, of which Marion Martin is not an owner in the subdivision. 17-27a-207 is therefore also not applicable.

17-27a-206 however does apply, it states:

### **17-27a-206. Third party notice.**

- (1) If a county requires notice to adjacent property owners, the county shall:
  - (a) mail notice to the record owner of each parcel within parameters specified by county ordinance; or
  - (b) post notice on the property with a sign of sufficient size, durability, print quality, and location that is reasonably calculated to give notice to passers-by.
- (2) If a county mails notice to third party property owners under Subsection (1), it shall mail equivalent notice to property owners within an adjacent jurisdiction.

In this case Weber County does have a standard in the subdivision section of the Weber County Land Use Code which states:

Sec. 106-1-6(b) Public Notice. Notice of the proposed subdivision shall be mailed not less than seven calendar days before the Planning Commissions' public hearing on the proposed subdivision to the record owner of each parcel within 500 feet of the property proposed for subdivision; or posted not less than three calendar days before the public hearing, on the property proposed for subdivision, in a visible location, with a sign of sufficient size, durability, and print quality that is reasonably calculated to give notice to passers-by.

Notices and maps were created, printed and sent to property owners within 500 feet for the following meetings:

<u>Project</u>	<u>Printed/Sent Date</u>	<u>Meeting Date</u>	<u>Land Use Authority</u>
CUP 2012-02	3/20/2012	3/27/2012	OVPC
Sub Final ph1	9/17/2012	9/25/2012	OVPC
CUP 2013-08	3/19/2013	3/26/2013	OVPC
BOA 2013-07	8/1/2013	8/8/2013	BOA

The Weber County Planning Division has followed all State statutory requirements regarding notice for this development. Ms. Martin claims that she was not adequately notified of these meetings. Although she does state that she does receive these notices (see page 3 of the appeal), albeit while living in Montana. She did not contact however, Planning Division Staff until receiving the notice in March of 2013. Being that the Weber County Land Use Code's process for a PRUD application is required to be reviewed by both the Planning Commission at their regularly scheduled date, and subsequently a few weeks by the Weber County Commission. It is apparent that adequate time is allowed for any appeal could be made.



Durham Jones & Pinegar, P.C.  
1104 East Country Hills Drive, Suite 710  
Ogden, Utah 84403  
801.395.2424  
801.395.2430 Fax  
www.djplaw.com

Douglas A. Taggart  
Michael S. Malmberg  
Attorneys at Law  
dtaggart@djplaw.com  
mmalmberg@djplaw.com

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6/12/2013  
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June 12, 2013

VIA EMAIL AND U.S. MAIL

Weber County Commission

**Re: Appeal to Commission Regarding Actions Approving Amendments to the Edgewater Beach Resort Site Plan**

Dear Commissioners:

The purpose of this letter is to appeal the actions of the Ogden Valley Township Planning Commission ("OVTPC") and the Weber County Commission ("WCC") in approving amendments to the Edgewater Beach Resort (the "Development") site plan. The Development site plan, as amended, is not in conformity with the Ogden Valley General Plan (the "General Plan"). The Development site plan, as amended, improperly reduces the setbacks previously required for the Development, which setbacks were established after extensive review and with public comment. The Development site plan, as amended, was approved by the OVTPC and the WCC without giving adequate notice to adjacent property owner Marian Martin, and without affording Ms. Martin, and others of the public, the opportunity to comment on and object to the proposed amendments. The amendments at issue were recommended and approved during the OVTPC meetings on March 27, 2012, and March 26, 2013, and the WCC meetings on April 10, 2012 and May 21, 2013.

#### **BACKGROUND:**

Marian Martin owns a farm west of and adjacent to the proposed development site of the Edgewater Beach Resort. The farm lies on the southern border of Pineview Reservoir near the entrance to the Ogden Canyon. The Farm forms a significant part of the "entrance experience" of the Ogden Valley. In order to preserve the rural atmosphere and natural beauty of the property, Ms. Martin caused the farm to become subject to a conservation easement.

To ensure that the development of surrounding property is compatible with the conservation easement, and that any proposed development complies with the relevant

zoning ordinances and the General Plan, Ms. Martin has actively participated in OVTPC hearings for many years. Participation in such meetings has been complicated by the fact that Ms. Martin lives out of state. Nevertheless, upon receiving notice of any hearing that implicates her interests, Ms. Martin has, when possible, attended the hearings, and has, when attendance was not possible, written letters to be read in the meeting, particularly to address such recurring issues as the density of buildings and the size of the buffer zone between her farm and any buildings on the adjacent property.

Prior to March of 2012, the OVTPC and WCC had consistently concluded that there should be a buffer zone of 50-feet between the Development and Ms. Martin's property to the west, such buffer zone intended to create a transition between the farm and the Development. The number of buildings along the western edge of the Development was also kept at a minimum, with the previously approved site plan only containing two buildings on the side of the Development where the farm was located.

When the earlier version of what is now the Edgewater Beach Resort was approved in 2004, the Planning Commission and the County Commission required a 50-foot setback between Ms. Martin's farm and the Development. *See* OVTPC minutes, April 26, 2011, at 4. The OVTPC rejected an attempt to reduce these setbacks in April of 2011, even though the proposed changes to the site plan also included reduced overall building density. *Id.* at 6. Commissioner Graves stated that "[t]he whole intent along the west side was to have a transition," and that the 50-foot buffer "was put in there for a reason and they need to stick with that." *Id.*

These prior actions in maintaining the buffer zone and limited building density are consistent with the General Plan and zoning ordinances. The stated goals and objectives of the General Plan include "protect[ing] open space and sensitive lands," and "maintain[ing] the Valley's rural atmosphere and rural lifestyle." §§ 2.02, 2.03. The Valley's rural character is to be preserved by "discouraging development within . . . entry corridors, and areas with scenic/aesthetic values." General Plan, § 8.01. Development within the Valley's "open view corridors" and "entrance experiences" should not be "obtrusive or unduly compromise the Valley's aesthetics." General Plan, § 4.04. The General Plan identifies Pineview Reservoir as a view corridor, and U-39 as an entry corridor. *Id.* A setback of 100 feet is required for any building along an entry corridor, and for any development around the reservoir. *Id.* at §§ 4.04, 4.05.

Likewise, the CVR-1 zoning guidelines—which apply to the Edgewater Beach Resort—require that "even though the area is primarily commercial in nature, it should be compatible with the general surrounding natural environment." Weber County Code Ordinance 9C-1. In making land use decisions regarding such developments, the Planning Commission must ensure "that the natural environment is preserved to the greatest possible extent." *Id.*

Further, according to Weber County's Ordinance governing Planned Residential Unit Developments ("PRUD"), the county must ensure that "property adjacent to the PRUD shall not be adversely affected," and that "uses of least intensity or greatest compatibility be arranged around the boundaries of the project." 22-D-6(2).

Considering this background, it is surprising that the OVTPC recently switched course so dramatically to approve a site plan that is inconsistent with the relevant zoning ordinances, the General Plan, and prior committee decisions. In the OVTPC meeting on March 27, 2012, the committee considered a proposal to amend the site plan for the Edgewater Beach Resort. The minutes of the meeting indicate that OVTPC staff member Ben Hatfield characterized the proposed amendments as a "major change" to what was approved in the past. OVTPC minutes, March 27, 2012, at 1. The proposed amendments involved changes to the density of the Development, an increased number of buildings on the west end of the Development, and a reduced buffer zone with Ms. Martin's property. Although this hearing implicated Ms. Martin's interests in a significant way, she was not adequately notified of the meeting, or of the specific proposals at issue.

The Utah Code requires a county commission to give ten days prior notice by mail to each affected party when conducting certain types of public hearings, including those to adopt or modify a land use ordinance. See, e.g., Utah Code § 17-27a-204, 205. The Utah Code likewise requires notice be given to adjacent landowners where county ordinance requires such notice or when a subdivision is amended. Utah Code § 17-27a-206, 207. Weber County Subdivision Ordinance 1-6 requires notice to be mailed to adjacent landowners not less than seven days before the Planning Commission's hearing. The only notice Ms. Martin received of the March 27, 2012 meeting was a letter postmarked March 23, 2012. Thus, the letter was only sent out four days before the meeting occurred, rather than the required ten (or at a minimum seven) days. This letter was delivered to Ms. Martin in Montana, and was not received in time for Ms. Martin to submit a comment or objection at the hearing. As a result of the insufficient notice Ms. Martin received, her ability to properly protect her interests at the meeting was lost.

Also, in conversations with planning staff, and based on the proposed amendment (which provides for four phases to the development), Ms. Martin was led to believe that the hearing only dealt with "Phase 1" of the Development, and that the set-back issues and number of buildings (which Ms. Martin understood related to Phase 3 of the Development) would not be discussed until a later point in time.

Without any input from Ms. Martin, there was no discussion by the OVTPC regarding the 50-foot setback on the west side of the property, on the need for a transition from the conservation easement on the west to the Development on the east, or on the need for meeting the requirements of the General Plan in maintaining open space and a site plan that is compatible with adjacent property. Had Ms. Martin been properly notified of the

meeting and the details of the proposed amendment at issue, she would have ensured that these issues were discussed and that her interests were adequately protected. It was therefore crucial that Ms. Martin be given proper notice and a chance to be heard at this meeting.

The WCC approved the amendments made to the Edgewater Beach Resort site plan at the committee meeting on April, 10, 2012. Ms. Martin was not given notice of this meeting, and there was no objection raised, nor any discussion on the amendments.

On May 21, 2013, the WCC approved a new conditional use permit relating to the Development, and approved a request to amend the site plan for the Development. At this same hearing, the WCC approved the vacation of 6300 East, the former county road that runs between Ms. Martin's property and the Development. Although Ms. Martin did not object to the vacation of 6300 East (provided the developers deeded her a twelve foot strip east of the center line of the road), she, through counsel, stated her objection to the reduction of the setback from fifty to thirty-five feet, and stated her objection to the increase in the number of buildings located on the western edge of the Development. *See* May 21, 2013 minutes at 2.

Ms. Martin now appeals the action of the County Planning Commission in approving the amended sited plan and in granting the conditional use permit.

#### GROUND FOR APPEAL:

##### 1. Inadequate Notice

Ms. Martin was not given timely notice of the OVTPC meeting that occurred on March 27, 2012, and was not given any notice of the WCC meeting on April 10, 2012. These meetings, particularly the March 27 meeting, involved important proposed changes to the building density and buffer zone of the Edgewater site plan. These are the very changes that Ms. Martin had been opposing for nearly a decade, and clearly implicated her interests in a significant way. Failure to adequately notify Ms. Martin of these meetings prevented her from asserting her interests, and has allowed adjacent property owners to take advantage of her absence.

While some time has passed between the initial commission actions at issue and the filing of this appeal, this appeal is timely. Ms. Martin only recently became aware of the details of the amendments to the Edgewater site plan. As a property owner living out of state, some consideration should be given toward Ms. Martin's unique situation, and to the difficulty inherent in staying informed as to the commission's decisions. Once Ms. Martin became aware of the amendments at issue, she objected by letter in the April 9, 2013 WCC hearing, and she directed that her attorney attend a meeting of the WCC and object to the

amendments to the site plan, which counsel did at the meeting on May 21, 2013. Preventing Ms. Martin from being heard on the substance of her appeal when she was not given statutorily adequate notice constitutes a lack of due process.

Further, the time for appeal is properly calculated based on the date of the most recent approval of the amended site plan. Because Ms. Martin's counsel objected to the amendment to the Edgewater site plan made on May 21, 2013, the date in which the WCC approved the proposed amended site plan, Ms. Martin has fifteen days from the time that the minutes of that meeting were approved to file an appeal. The minutes of the May 21, 2013 meeting were approved on May 28, 2013. Therefore, Ms. Martin has fifteen days after May 28, 2013 to file her appeal.

## 2. Lack of Fundamental Fairness

Among the stated purposes of Utah's County Land Use, Development, and Management Act is "to provide fundamental fairness in land use regulation." Utah Code § 17-27a-102. The actions of the OVTPC and WCC are not in keeping with the purposes of the Act, as they have failed to provide fundamental fairness in their dealings with Ms. Martin.

The OVTPC in particular has dealt with Ms. Martin for many years, and is familiar with her unique situation as a property owner who is trying to protect her property interests while living out of state. The OVTPC is also familiar with Ms. Martin's efforts to protect the conservation easement, and to collaborate with the OVTPC and her neighboring property owners to ensure that any new developments will harmonize with the natural, undeveloped beauty of Ms. Martin's property by maintaining an appropriate buffer between the conservation easement and the Development.

## ORDINANCE APPROVAL CRITERIA AT ISSUE:

### 1. Is the proposed use allowed in the CVR-1 Zone?

The OVTPC concluded that the proposed amendments to the Edgewater Beach Resort site plan were allowed under the CVR-1 zoning ordinance. This ordinance requires that "even though the area is primarily commercial in nature, it should be compatible with the general surrounding natural environment." Weber County Code Ordinance 9C-1. Further, in making land use decisions regarding such developments, the Planning Commission must ensure "that the natural environment is preserved to the greatest possible extent." *Id.*

The OVTPC made no showing that either of these requirements were met. Previous decisions by the commission had required a 50-foot setback in order to make the

Development compatible with the surrounding natural environment. Departing from this requirement would seem to require more in the way of discussion and analysis than was evident in the minutes of the relevant hearings. The owner of the farm to which these setbacks directly relate should have been given proper notice and a chance to be heard at these hearings.

2. Have criteria for issuance of a conditional use permit been met and have the mitigation of potential detrimental effects been accomplished?

The OVTPC provided no explanation of how the mitigation of potential detrimental effects had been accomplished. It is difficult to understand how such a conclusion was reached when there was no discussion of the need for a transition from the conservation easement to the Development, or on the need for meeting the requirements of the General Plan in maintaining open space and a site plan that is compatible with adjacent property. The lack of discussion of relevant issues was likely due to the fact that no objection or comments were made at the hearing. However, the lack of such objections and comments were due to the County's own failure to provide adequate notice of the meeting. The potential detrimental effects to the aesthetics of the valley and its rural character by making changes to the entry experience into the valley are important issues, and should have involved a substantial discussion and input by interested parties. Since no such discussion was had, and perhaps the most interested party, Ms. Martin, was excluded from participating due to inadequate notice, the criteria for issuance of the conditional use permit should not have been met.

3. Does the proposed PRUD plan have a superior design compared to the existing site plan or a conventional layout of lots?

According to the minutes of the OVTPC meeting, the committee seems to have simply relied upon the planning staff's conclusion that the site plan was found to have a superior design. Due to the lack of proper notice, Ms. Martin was unable to comment or object to the amended site plan design. Although the amended site plan provides for a lower density, the increase in the number of buildings on the western edge of the development, together with the decrease in the required set-back along that western edge, are not in keeping with the General Plan and harm Ms. Martin. Ms. Martin should have been afforded the opportunity to express her concerns with the proposed amendment. By failing to provide the notice required by law, the County deprived her of that right.

PRAYER FOR RELIEF:

Ms. Martin asks that the Weber County Commission revoke the approval of the Conditional Use Permit issued on May 21, 2013. Ms. Martin asks that a stay be put in place

Weber County Commission  
June 12, 2013  
Page 7

on the Edgewater Beach Resort PRUD site plan during the time that this appeal is under consideration.

Very truly yours,

**DURHAM JONES & PINEGAR, P.C.**

A handwritten signature in blue ink, appearing to read "Douglas A. Taggart", with a long horizontal flourish extending to the right.

Douglas A. Taggart  
Michael S. Malmborg



To the Board of Adjustment for Weber County

July 23, 2013

CELTIC BANK'S STATEMENT IN OPPOSITION TO MARIAN MARTIN'S  
REQUEST FOR REVIEW OF OGDEN VALLEY TOWNSHIP PLANNING COMMISSION'S  
AND WEBER COUNTY COMMISSION'S 2012 APPROVAL OF THE EDGEWATER BEACH  
RESORT PROJECT

Dear Members of the Board of Adjustment:

This statement is provided for your review in anticipation of your August 8, 2013 meeting. Celtic Bank respectfully requests the opportunity to make brief oral remarks at that meeting.

BACKGROUND

Celtic Bank is a Utah corporation operating from offices in Salt Lake City. The bank is primarily a Small Business Administration ("SBA") lender and its core operations focus on lending to small and mid-size businesses. It was through the 2009 default and subsequent foreclosure of a loan made to Dr. Catanzaro that Celtic Bank became the owner of the property commonly known as the Edgewater Beach Resort (the "Project") located in the Ogden Valley.

Since 2009 Celtic Bank has paid property taxes and engaged in efforts to design a Project suitable to the Ogden Valley and in conformance with its General Plan. It made proper application for approval of a PRUD and has engaged engineering and architectural services and complied with the directives of Weber County staff in designing the Project. After design modifications spanning almost 2 years, the Ogden Valley Township Planning Commission ("OVTPC") and the Weber County Commission ("WCC") granted approval of the PRUD in 2012.

Once it had received the 2012 approvals Celtic Bank began marketing the Project for sale and has relied on the decisions made by the OVTPC and WCC in those efforts. The Project is currently under contract but that sale is contingent upon the Project being an approved PRUD and recordation of the final plat. Further delay by the County will result in significant economic damage to Celtic Bank; a result that is fundamentally unfair given the efforts made by Celtic Bank over the course of years, its cooperation with Weber County, and its reliance on the County's 2012 approvals.

OUTLINE OF ISSUES

The core of Ms. Martin's opposition to the 2012 and 2013 approvals relating to the Project is that the County has failed to properly consider its detrimental effects on Ogden Valley generally and her property in particular. This argument is based on decisions made in 2012 by the OVTPC and WCC to grant reduced setbacks along the now-vacated 6300 East.

But in 2012 the lowered setbacks were researched by Planning Department Staff and discussed by the OVTPC and WCC and were granted upon a finding that the Edgewater PRUD was "found to have a

superior design" and "a PRUD if found to be a superior design, the setbacks are lowered." Because of these reduced setbacks, Ms. Martin argues that the rural atmosphere of her property and the Ogden Valley will be irreparably damaged and lowered setbacks are in contravention of the Ogden Valley General Plan.<sup>1</sup>

In sum, Ms. Martin argues that:

1. She was given inadequate notice of County meetings at which to voice her opposition to lowered setbacks and the County's decisions are fundamentally unfair.
2. The PRUD was improperly approved and a superior design may exist.
3. The detrimental effects of the Project have not been addressed and are improperly mitigated.

Celtic Bank responds as follows.

**OVTPC AND WCC APPROVAL TIMELINE**  
**DIAGRAM OF SETBACKS**

A table summarizing the chronology of the decisions of the OVTPC and WCC is attached hereto as **Exhibit A**, copies of the minutes of the meetings referenced below are attached hereto as **Exhibits B through G**. A diagram illustrating the setbacks along 6300 East is attached as **Exhibit H**.

**DETAILED OPPOSITION**

- A. **In 2012 the Edgewater PRUD was found to be of superior design and 35' setbacks were granted by OVTPC and WCC based upon Planning Staff recommendation. The time to challenge the 35' setbacks is time barred by statute.**

The current PRUD site plan with 35' setbacks was approved in 2012 by both the OVTPC and the WCC. The reduced setbacks were recommended by Planning Department Staff because the PRUD was found to be "of superior design." See e.g. Exhibit B, p. 1. And contrary to Ms. Martin's assertions, the issue of reduced setbacks was discussed and consideration of their impacts was considered. See Exhibit B, pp. 2-3, and see Exhibit H.

Under Utah statute §17-27a-703(1):

[A]ny person adversely affected by the land use authority's decision administering or interpreting a land use ordinance may, *within the time period provided by ordinance*, appeal that decision to the appeal authority by alleging that there is error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of the land use ordinance.

The time period provided by Weber County ordinance §31-7 (Appeals) is 15 days:

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<sup>1</sup> And while Ms. Martin cites to numerous Weber County ordinances and the General Plan in her appeal letter, nowhere are 50' setbacks mandated.

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Appeals from administrative decisions shall be submitted to the Weber County Planning Division not more than *15 calendar days after the date of the written notice of decision.*

Thus, the time to challenge the setbacks expired 15 days after the date of the WCC's written decision which was the publication of the April 10<sup>th</sup> meeting minutes at the May 1, 2012, meeting of the WCC. Ms. Martin's appeal relating to the setbacks would have to have been made no later than *mid-May 2012*, in order to be timely. No appeal was made, and the issue of the setbacks was settled as of mid-May 2012.

Further, subsequent to the approval of the setbacks, the OVTPC granted approval of the current condominium plat at its September 25, 2012 meeting. *See Exhibit D.* No appeal was made relating to that approval, and therefore, appeal of the current condominium plat with reduced setbacks is barred by statute.

Notably, in approving the Edgewater PRUD, Commissioner Warburton stated the project "keeps to the general plan" and that she believed that the project is "good for the valley." *See Exhibit B, p. 3.* Commissioner Graves stated that while more landscaping might be needed on the west side, the planned landscaping "does a good job at buffering the buildings." *Id.* The General Plan has been considered in the decisions relating to the Project. Based upon the foregoing, Celtic Bank respectfully requests Ms. Martin's untimely appeal as to the reduced setbacks be denied.

**B. Ms. Martin's appeal can only be timely as to (1) vacation of 6300 East and (2) amendment of the site plan for the Project providing for emergency access due to vacation of 6300 East. Neither decision impacts the General Plan.**

Ms. Martin's appeal can only be timely as to the May 21, 2013 decisions made by the WCC. At the May 21, 2013 meeting the WCC voted unanimously to (1) approve the vacation of 6300 East and (2) amend the Project site plan to provide for emergency access due to the vacation of 6300 East. And while Ms. Martin bases much of her appeal on aspects of the General Plan, *County Staff has found that the vacation of 6300 East and amending the site plan due to the vacation has no impact on the General Plan.* *See Exhibit E, pp. 1-2.*

Notably, Ms. Martin did not object to the vacation of 6300 East at the May 21 meeting. And it was only *after a vote was taken during which all Commissioners voted "aye"* to allow amendment of the site plan for the Project that she, through her attorney, stated objections to the reduced setbacks. *See Exhibit G, pp. 1-2.*

But the setbacks were not at issue in either of the decisions made by the WCC on May 21, 2013. *That issue was settled in 2012.* Once again, because Ms. Martin's appeal of the setbacks is not timely and is not relevant to the May 21, 2013 decisions voted upon by the WCC, Celtic Bank respectfully requests it be denied.

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### **C. Notice to Ms. Martin has been adequate and the time to challenge the sufficiency of notice has lapsed.**

Ms. Martin's challenge of the sufficiency of notice provided by Weber County is also extremely untimely and should be disregarded. Critically, Ms. Martin does not claim that she was *never* provided noticed, but rather, that she was *noticed too late* to provide substantive comments. But she also states that she has "participated in OVTPC hearings for many years."

Indeed, Ms. Martin, and any other interested party, has on-line-anywhere access to Weber County's Wiki (Miradi) system on which all agendas and meeting minutes are posted. Further, the Commission meets on a predictable, regular schedule. Since Ms. Martin has been objecting to the Project for "nearly a decade," it stands to reason that she has an obligation to review agendas and meeting minutes in order to keep up to date with events as regards her property. Her claim that "her unique situation" as an out-of-state landowner provides her with extraordinary remedies and consideration beyond that provided by statute is simply inappropriate.

Critically, over the course of years Ms. Martin has *never* formally challenged the sufficiency of notice provided to her until now. But under Utah Code §17-27a-209, unless sufficiency of notice is challenged within 30 days, "the notice is considered adequate and proper." Therefore, any challenge to the sufficiency of notice provided to Ms. Martin in 2012 is extremely untimely and should be disregarded.

### **D. Fundamental fairness favors Celtic Bank.**

Issues of fundamental fairness favor Celtic Bank under these circumstances. Celtic Bank is only a landowner through foreclosure. Yet, it has strived to be a good citizen of Ogden Valley. It has spent years and over \$200,000 in re-designing and re-engineering the Project and has timely paid county property taxes. Based upon the final approvals granted in 2012, Celtic Bank has been in negotiations to sell the Project as a PRUD "with all required County approvals" to qualified developers. Further delay or a stay of any County approval would significantly damage Celtic Bank economically and be extremely prejudicial to its rights as an Ogden Valley landowner and a citizen of Utah.

### **E. The Project's design has gone through several modifications to address and mitigate its effects.**

The Project's design and site planning have gone through several iterations to address and mitigate the effects on Ogden Valley and the General Plan has been extensively considered. The mitigating modifications include:

1. The residence density has been reduced from over 160 to 111.
2. The reduced density has allowed for the addition of view corridors allowing sight lines through the Project.
3. The height of the buildings has been lowered.
4. Additional landscaping has been added to buffer zones.
5. 6300 East has been vacated and Celtic Bank will deed its portion of the road to the Martin property. The vacation will prevent additional traffic from impacting the farm.

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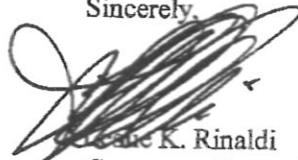
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Additionally, the Project's residences will be primarily designed as vacation homes with the result that the day-to-day impacts on traffic and noise will be seasonal.

Given that the property upon which the Project sits has long been zoned for development, and the Project has been rigorously analyzed by Weber County Staff and held to be in conformance with the General Plan and all relevant Weber County ordinances, Celtic Bank respectfully requests that the Board of Adjustment deny Ms. Martin's appeal and allow the Project to go forward without further delay.

Sincerely,



Michele K. Rinaldi  
*Corporate Counsel*

# EXHIBIT

## A

## APPROVAL TIMELINE

Minutes of meetings referred to below are attached as Exhibits B-G.

<b>Date</b>	<b>Body</b>	<b>Action Requested</b>	<b>Findings &amp; Decision</b>
March 27, 2012 Exhibit B	OVTTC	Request amendment of PRUD with current layout and 35' setbacks	<ul style="list-style-type: none"> <li>The proposed PRUD with lowered setbacks found to be of superior design, PRUDs with superior design are allowed to have reduced setbacks</li> <li>Commissioner Warburton stated the project keeps to the general plan and believes that the project is "good for the valley."</li> <li>Commissioner Graves stated that while he thinks more landscaping is needed on the west side, it does a good job at buffering the buildings</li> <li>Vote was 7-0 all voting "aye"</li> </ul>
April 10, 2012 Exhibit C	WCC	Request amendment of Edgewater PRUD with current layout and 35' setbacks	<ul style="list-style-type: none"> <li>Vote was 3-0 all voting "aye"</li> <li>Minutes approved May 1, 2012</li> </ul>
September 25, 2012 Exhibit D	OVTTC	Request final approval of condominium plat with current layout and 35' setbacks	<ul style="list-style-type: none"> <li>Vote was 7-0 all voting "aye"</li> </ul>
March 26, 2013 Exhibit E	OVTTC	Request to vacate 6300 East in response to UDOT requirements  Request amendment to site plan to allow for removal of access from 6300 East (include hammerhead culdesac)	<ul style="list-style-type: none"> <li><b>Finding of no impact on General Plan</b></li> <li>Note that "existing site plan was approved in conformance with the Ogden Valley General Plan in 2003."</li> <li>Motion passed 5-0</li> <li><b>No impact to General Plan noted</b></li> <li>Motion passed 5-0</li> </ul>

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April 9, 2013 Exhibit F	WCC	<p>Request to vacate 6300 East in response to UDOT requirements (OVTPC held no impact to General Plan)</p> <p>Request amendment to site plan to allow for removal of access from 6300 East (include hammerhead cul-de-sac) (OVTPC held no impact to General Plan)</p>	<ul style="list-style-type: none"> <li>Ms. Martin through her attorney did not object to the road vacation, but wanted to get her own survey to confirm layout and centerline</li> <li>Decision was tabled until Ms. Martin could get a survey</li> <li>Since decision on this request was tied to vacation of 6300 East, this request was tabled too.</li> </ul>
May 21, 2013 Exhibit G	WCC	<p>[Ms. Martin obtained her own survey of 6300 East prior to rehearing by WCC on these matters.]</p> <p>Request to vacate 6300 East in response to UDOT requirements (OVTPC held no impact to General Plan)</p> <p>Request amendment to site plan to allow for removal of access from 6300 East (include hammerhead cul-de-sac) (OVTPC held no impact to General Plan)</p>	<ul style="list-style-type: none"> <li>Ms. Martin, through her attorney, stated no objection to the vacation of 6300 East, but requested a deed for the property Celtic Bank will be granting</li> <li>Vote to adopt Ordinance 2013-15: 3-0, all "aye"</li> <li>Ordinance was adopted vacating 6300 East</li> <li>Agenda item announced, no public comment offered</li> <li>Vote 3-0 "aye" to approve site plan with hammerhead cul-de-sac.</li> <li>Member of Ogden Valley Land Trust, John Bingham commended the vacation of 6300 East as a value to the conservation easement</li> <li>After vote taken, Ms. Martin's attorney offered public comment objecting to 35' setbacks</li> </ul>

# **EXHIBIT**

## **B**

Minutes of the Ogden Valley Township Planning Commission meeting held March 27, 2012, in the Weber County Commission Chambers, commencing at 5:00 p.m.

Present: Kevin Parson, Chair; Pen Hollist, Greg Graves, John Howell, Laura Warburton, Dennis Montgomery, Ann Miller

Absent/Excused:

Staff Present: Rob Scott, Director; Jim Gentry, Planner; Ben Hatfield, Planner; Chris Allred, Legal Counsel; Sherri Sillitoe, Secretary

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***Pledge of Allegiance***

***Roll Call***

**1. Minutes:**

- 1.1. Approval of the February 7, 2012 and March 6, 2012 work session minutes and the February 28, 2012 regular meeting minutes.

Commissioner Montgomery indicated that his address is 7800 E 1120 N; Commissioner Howell indicated that he wasn't at the 3/6/12 meeting but read the minutes and noticed that the it is Snowberry Inn and not Strawberry Inn as listed.

Chair Parson declared the minutes of the 2/7/12, 2/28/12, and 3/6/12 meeting minutes as amended.

**2. Petitions, Applications, and Public Hearings:**

**New Business:**

- 2.1. CUP 2012-2 Consideration and action on a request to amend the Edgewater Beach Resort PRUD (CUP 2003-12) site plan with CUP 2012-02

Ben Hatfield presented a staff report and indicated that the proposed amendment is a major change to what was approved in the past. With this proposal, the applicant is looking to have a select mix of housing and multiple uses. There will be commercial space at the entrance in two buildings. There will be the existing 4-plex, 3 tri-plexes, some duplexes and 28 single-family units as well as other amenities.

The applicant should address the following questions:

- Is the phasing plan appropriate?
- Is this new PRUD design better than the previously approved design?
- Are there any potential negative or detrimental effects that have not been considered and need to be addressed as a conditional use?
- Does the Planning Commission have other questions that have not been addressed?

As part of the PRUD, this plan will also go to the County Commission for approval.

Staff recommends approval of this conditional use application subject to the applicant meeting the conditions of approval in this staff report and any other conditions required by the Planning Commission. This recommendation is based on the following findings:

- The proposed use is allowed in the CVR-1 Zone and meets the appropriate site development standards.
- The criteria for issuance of a conditional use permit have been met and the mitigation of potential detrimental effects has been accomplished.
- The proposed PRUD plan is found to have a superior design compared to the existing site plan or a conventional layout of lots.

Commissioner Warburton said she has spent the last couple of months trying to understand special and private sewer districts and wonders if the project will tie into Mountain Sewer? Ben Hatfield indicated that yes, it would tie into Mountain Sewer.

The storage units would run parallel to the highway. Ben Hatfield indicated that the rear of the storage units would be visible from the highway.

Commissioner Hollist clarified if from the eastern edge to the subdivision where the topography slopes down into the Forest Service drainage that no building would be allowed there. Mr. Hatfield replied yes.

Commissioner Hollist said concerning the north boundary is that area very steep between the northern boundary and the lake? Ben Hatfield said there is a bluff along the lakeshore.

Commissioner Howell said looking at the map at C-5, the boundary line and the pathway, how much space is required between the property line and any development on the east side of the development? Ben Hatfield said with a PRUD if found to be a superior design, the setbacks are lowered. Commissioner Hollist said that was the basis of his question because even though the setbacks on Unit 1 and Unit 20 encroach on that property line, there is open space that would not be developed and it is a drainage area so it will not appear to encroach on any development or other property line.

Eric Langvardt, Landscape Planner & Architect, Ray Bertoldi Architect & Elise Howell applicant's representative. The project is a revised PRUD and a significant reduction (111 units) in density with single-family townhomes, duplexes, three-plexes and roughly 5,300 sq. ft. (a neighborhood commercial node) for a few neighborhood commercial uses. They are proposing storage barns where the locations are placed sensitively to tuck them into the hillside with hopefully flat roofs. They are taking opportunity of the grade. The front porches will be emphasized and the garages deemphasized. Every one of the units fronts an open space amenity. They met with Ted Black of the Fire District who gave final approval to their proposal.

They were able to provide a transition from the Ski Lake project. As they move to the outside, the open space will move in and out throughout the project. They are proposing ballard lights and they anticipate having some soft architectural lighting for parking.

Commissioner Montgomery asked if the gravel road was a dedicated county road, and Ben Hatfield indicated that a portion of that was dedicated in phase 1. The road has been on a map since the early 1980's.

Commissioner Graves asked why there are two access points on the west road. Eric Langvardt said Ted Black asked that the access roads be extended rather than just for emergency access. Commissioner Graves said it places the lots on that access surrounded on all sides by road. Mr. Langvardt said the reality is that that it is a smaller gravel road and could almost be considered an alley. The units actually block the garages from view. Commissioner Montgomery said he could see where Ted Black is coming from. Eric Langvardt indicated that they could possibly do a hammerhead there but the reality of the plan is that the development fronts green.

Commissioner Graves said if they maintain the first access point like it is what prevents the people down below from using it. Mr. Langvardt indicated that they would be crash gates.

Commissioner Howell asked if there was any space between the garage door and the road for someone to park. Eric Langvardt indicated no, it was done intentionally so as not to block the driveways. They have provided extra parking in the rear as well as tucked into space here and there. Commissioner Howell said he is concerned that parking would be a problem. Mr. Langvardt said they do not ever believe they will reach 100% occupancy, as many would be used as second vacation homes. Some of the extra spaces will be sold to the owners for RV parking, etc.

Commissioner Graves indicated that he does not see the previous 100 ft. setback for the commercial. Eric Langvardt indicated that they believe their commercial (it will be 45 ft. off the pavement). They have exceeded the 100 ft. setback with the storage units.

Commissioner Graves said that the description shows for a 4-car garage on the existing 4-plex. All new buildings will be shorter than the exiting building. All garages will be low key with doors interior to the project.

Commissioner Graves said there has been talk about the requirement of dealing with the canal. Eric Langvardt explained that their engineer's plan is to pipe it back and come across as shown in the utility plan. They are not sure if the turn lane would be required by UDOT. To clarify for Commissioner Miller, Mr. Langvardt said they are not planning a connection off the beach as per the Forest Service. They have talked to Meg at Weber Pathways about having a 10 ft. hard surface trail as part of the Pineview Loop.

Ray Bertoldi, Bertoldi Architects, said from a site plan aspect they reduced density and they looked at every building the same way in sense of its overall mass. They took a hard look at the rooflines, and the shadows of the buildings, and they would like to incorporate some flat roofs. The highest building would be 23 ft. Many of the pitched roofs drain down into the spaces and the varied rooflines allow them to control water. They would not have any drip lines where people walk and makes for a safer environment. He agrees that the storage units will be the nicest storage units around. Mr. Bertoldi said they would integrate different types of siding in the project and will use earth colors. They will have asphalt shingles as well as metal roofing.

Ray Bertoldi indicated that the hard surface water drains to the detention area. On the east commercial building, they have integrated a gable style roof over part of the building and then a lower portion a flatter roof on the front store side that would be protected. They would utilize the grade of the property on the buildings.

Chair Parson said he is concerned where the water travels down from Hwy 39 to the natural drainage. John Reeve said there is an existing ditch there.

Commissioner Hollist asked about basements. Mr. Bertoldi said the units would not all have basements but they will all be subterranean.

Commissioner Warburton thanked Mr. Bertoldi and Mr. Langvardt for their enjoyable presentation.

Steve Clarke said he told Mr. Bertoldi before the meeting that this is a more comfortable plan than those they have seen before.

**MOTION:** Commissioner Warburton move to approve of CUP 2012-02 a request to amend the Edgewater Beach Resort PRUD (CUP 2003-12) site plan with CUP 2012-02 conditioned upon all staff and other agency recommendations. Commissioner Montgomery seconded the motion.

Commissioner Warburton said the plan is keeps to the general plan and that she believes this is a good project for the valley. Commissioner Howell indicated his concerns regarding parking. Commissioner Graves asked if everyone is comfortable with the setback from the highway. Commissioner Miller said the argument of the commercial needing to be closer to the highway in order to be valuable made good sense.

Commissioner Graves asked if everyone was comfortable with the canal. He is comfortable.

Commissioner Hollist said he would like to see the canal piped the entire distance for the safety of the children. Mr. Langvardt indicated that it would be a good idea.

John Reeve indicated that he has spoken with Greg Graves and they are of the same mind regarding the canal. Commissioner Graves indicated that he is president of the canal company that pipes that ditch. The agreement to pipe that ditch has always be part of any plan for this property.

Commissioner Graves said he would like to see a little more landscaping on the west side. It does a good job at buffering the buildings, but he believes that they need a little more buffering from the property to the west.

**VOTE:** A vote was taken and Chair Parson said the motion carried with all members present voting aye (Vote 7-0).

**Old Business:**

2.2. ZTA 2010-8 Consideration and Action on an amendment to Chapter 1 of the Weber County Subdivision Ordinance (General Provision – Filing Preliminary and Final plats).

Jim Gentry presented a staff report and indicated that his chapter outlines the requirements for submitting preliminary and final subdivision plats. Meetings have been held for approximately eight months with the Fire District, Engineering, Environmental Health, Surveyor/Recorder, and the Building Inspection Division. The purpose of these meetings was to bring the subdivision reviewing process current with state code and to make administering the Subdivision Ordinance more efficient and productive. Policy issues have been discussed with the County Commission.

There is no requirement under state code regarding public notice. Staff is proposing that anything over five lots notice would be sent to property owners.

Under the small subdivision definition it lists the number of lots that can be approved administratively by the Planning Division. Staff is suggesting the numbers are increased as follows:

- a) A subdivision consisting of ten (10) or fewer lots and for which no streets will be created or realigned, or b) An amended subdivision consisting of ten (10) or fewer lots and for which no new streets will be created or realigned; or c) A subdivision phase consisting of ten (10) or fewer lots which has a valid preliminary approval by the Planning Commission and meets all conditions of that preliminary approval, including proposed street layouts.

In a recent Advisory Opinion issued by the Office of Property Rights Ombudsman, the following statement was made: "to require a planning commission to review and decide on every application for a permitted use is at best, a waste of time and resources, and at worst, a potential violation of the County Land Use and Management Act, in that the policy decision regarding the use will be made again and again despite the ordinance.

Jim Gentry indicated that where people are amending a subdivision the administrative approval of ten lots could come into play. With ten lots, you would need a stub street because it would exceed the maximum block length.

The reason for the title report is to reduce the hours spent by different departments researching the six items listed below and a title report helps protect future buyers.

Changes to Subdivision Time Limitations were made to give the planning director administrative authority to approve time extensions if they meet the requirements of the ordinance. Instead of allowing subdivision to never expire (since closure is needed) staff is allowing one additional time extension for preliminary approval. Preliminary time extension beyond two will have to be approved by the planning director. Any extension request beyond the two needs to be based on other issues besides financial, economic, or self-imposed hardship. Time extensions for final approval remain the same.

Commissioner Warburton asked staff if the appeal process would come into play either way, and Mr. Gentry replied yes.

Commissioner Howell asked if once there is an easement shown on the subdivision plat is it there forever. Jim Gentry indicated yes until it is vacated or ordered to be removed by the courts.

Commissioner Warburton said on 26-1-2 the planning commission should make a recommendation on any variances. Jim Gentry said the appeals would be heard by the planning commission first.

Commissioner Hollist said he believes that he has changed his opinion. Much of what they do is react, and they try to apply the best judgment that they have. He believes that their neighbors are counting on them to have the vision of what is to occur in the future. He believes that is where their concentration should be. He believes that they should leave to the staff as much as they possibly can and only get involved only if there is a variance or a large amount of acreage.

Commissioner Warburton said she also agrees that developing ordinances is where their efforts should go. Commissioner Howell said that his concern of the ten lots was the amount of property it could conceivably be. Commissioner Warburton said that is the beauty of developing a master plan and having guidelines. Commissioner Graves said that even if it is a large piece, it is just one house with a lot of open space. Jim Gentry said that it is getting harder to find large tracts on existing roads today.

Commissioner Warburton said on Page 1-9, she said if they are not required to notify by state law. She is all about including the public so if they are going to take the notice away, she would like the Planning Commission to have a lesson on Miradi as well as lessons for the public. She believes it is a great idea to educate the public.

Commissioner Miller said she believes that they really have to learn it. Staff will set it up with Justin Morris so that the Planning Commissioners can learn the program.

Steve Clarke said he feels obligated to speak about administrative approval. A great many people in the Ogden Valley have a deep mistrust of county government. They often feel that county government is out to do things behind their back and to their detriment. He believes that the Planning Commission sits in a position of trust and believes they owe it to the citizens to learn as much as they can about the items they are to make recommendations or decisions for. He believes that the Planning Commission should look at making the best use of their time.

On Page 1-8 26-1-5-6-113 said it is his understanding that prior to this change, all the title work has been done by the staff. If in fact they are now asking the developer for the title report, is that cost deducted from the old filing fee for subdivision developers?

Regarding Miradi, said he learned today to not expect too much because computerized tools have their limits. It is a good tool, but he believes property owners should still be noticed.

Commissioner Howell said communication is the key. He believes that if they get more information into the Ogden Valley newspaper or the Standard about the current issues, he believes that would be a great tool. Commissioner Warburton indicated that the Ogden Valley News would print this information free.

Jim Gentry as part of the application currently, the county surveyor is doing the surveying work and it takes an exorbitant time to research the entire property history. It puts the liability back on the title company and not on the county. The fees that we do cost never covers the entire cost for the reviews, the County Commission structured the fees that way.

**MOTION:** Commissioner Hollist moved to recommend approval to the Commission of Zoning Text Amendment ZTA 2010-8, an amendment to Chapter 1 of the Weber County Subdivision Ordinance (General Provision – Filing Preliminary and Final plats) subject to items contained in the staff report packet. Commissioner Graves seconded the motion. A vote was taken and Chair Parson said the motion carried with a unanimous vote of all members present voting aye.

**3. Public Comments:**

**4. Planning Commissioner's Remarks:**

Commissioner Hollist said Sean Wilkinson as well as Steve Clarke attended the Wasatch 2040. By Year 2040, they would receive a 65% population increase. He does not know if real estate will handle a 65% increase. It will therefore squish out into the Wasatch Back, namely Snyderville and the Park City Area, Tooele, Ogden Valley, Brigham City and points north, etc. He believes that they need to really start and move aggressively to implement their vision. His vote is to move aggressively to do the planning. He likes the idea of using the Bear River model for updating their General Plan and obtaining public input. He believes that there will never be more than three access points to the Ogden Valley. If they can stop the people coming from the Salt Lake area in commercial nodes in the Ogden Valley and provide them an acceptable plan for immediate access shopping, etc. rather than have the people spill out all across landscape haphazardly.

Commissioner Graves said staff has been looking at this and has been responding. He believes they need to be a little patient.

Commissioner Warburton asked why isn't there a county presence on the Wasatch 2040, and Rob Scott said the Wasatch 2040 project grant is more of a Salt Lake County orientation. The real impact of that project will be mostly in Salt Lake County.

Commissioner Howell said in areas with enormous growth all the infrastructure is concentrated in certain areas. As a result, the growth will go up instead of sprawl.

Commissioner Hollist said in one of the questions of the Wasatch 2040 plan to have metropolitan centers, urban centers, town centers, etc., all of which goes up, was, "How many of you would be willing to live in one of these vertical communities?" Thirty percent responded that they were willing. Commissioner Hollist said he believes they should have their definition of what "up" means.

Commissioner Graves said he believes they will get into that with the node study.

## 5. Staff Communications:

### 5-1. Planning Director's Report

Rob Scott said there would be a work session this next week. Chair Parson said he would be gone next week.

### 5-1. Legal Counsel's Remarks

Chris Allred said gave an update on the residential facilities issue and discussions they had a lengthy discussion with Dan McDonald where he asked for a model ordinance. He replied no. He did say that there were a couple of good city ordinances out there. The landscaping is changing right now with the cases pending in the 10<sup>th</sup> Circuit. Maybe they should start initially with one of the good city ordinances and just tweak it from there.

Green Valley went to the District Court (it went to three different judges) (one was a friend of the applicant, another had to recuse himself, and the final judge was Judge Hadley. He ruled that it was a school and they had no other say. Essentially, the District Court said under the broad definition of school, it did constitute a school. The petitioner could appeal to the appeals court or to the State Supreme Court.

Commissioner Warburton said the ruling was on their ordinances as written not based on ADA or other regulations. Chris Allred replied yes.

## 6. Adjourn

The meeting was adjourned and a work session convened at this time.

### WS1. Revisions to the Agricultural AV-3 Zone

Jim Gentry indicated from the staff report that indicated that staff is proposing some revisions to the Agricultural AV-3 Zone. He reviewed the proposed changes with the Planning Commissioners.

Commissioner Warburton asked what is meant by *permanent structure*. There was a discussion about not being able to build a hay barn on a one-acre parcel in an agricultural zone.

- It was decided to change the ordinance language to allow mobile butchering including packaging.

Concerns were raised regarding 5B-2 and the livestock feed lot only allowed September through April.

Page 5B-4 Dog Training/Breeding, why are they allowing only 10 pups, where a litter could be 12 or more pups. What is the harm?

Under 5B-5 day care is allowed as a business in other agricultural zones. It is just to clarify that it is not a home occupation.

Commissioner Howell said why not list the words half an acre instead of 20,000 sq. ft. Rob Scott said when working with the public, they do not understand half of 43,560 so they simplified.

Commissioner Hollist asked if a small wind energy system could be allowed in a cluster subdivision's common space. Jim Gentry replied yes, but they would have to meet Chapter 23 requirements as well.

- It was decided that under 5B-2, staff would add "Assisted Living."

Rob Scott indicated that they do not really have agricultural zoning in this county. Across the country an agricultural parcel is 25 acres and up; they are just trying to balance things in Weber County.

There Being No Further Business, the meeting was adjourned.

Respectfully Submitted,

Sherri Sillitoe, Secretary  
Weber County Planning Commission

# **EXHIBIT**

## **C**

**MINUTES  
OF THE BOARD OF COMMISSIONERS OF WEBER COUNTY**

Tuesday, April 10, 2012 - 10:00 a.m.  
2380 Washington Blvd., Ogden, Utah

*In accordance with the requirements of Utah Code Annotated Section 52-4-7(1)(d), the County Clerk records in the minutes the names of all citizens who appear and speak at a County Commission meeting and the substance "in brief" of their comments. Such statements may include opinion or purported facts. The County does not verify the accuracy or truth of any statement but includes it as part of the record pursuant to State law.*

**COMMISSIONERS PRESENT:** Craig L. Dearden, Chair, Kerry W. Gibson and Jan M. Zogmaister.

**OTHERS PRESENT:** Ricky D. Hatch, County Clerk/Auditor; David C. Wilson, Deputy County Attorney; Fátima Ferneliús, of the Clerk/Auditor's Office, took minutes.

**A. WELCOME** - Chair Dearden

**B. PLEDGE OF ALLEGIANCE** - David Wilson

**C. THOUGHT OF THE DAY** - Commissioner Gibson

**D. CONSENT ITEMS:**

1. Purchase Orders for \$137,472.04
  2. Warrants #284375-#284531 for \$823,751.88
  3. Minutes for the meeting held on April 4 3, 2012
  4. Surplus Office Equipment from the USU Extension Services
  5. New business license
  6. Surplus Paramedic supplies from the Human Resources Department
- Commissioner Gibson moved to approve the consents items, approving the minutes for April 3, 2012; Commissioner Zogmaister seconded, all voting aye.

**E. ACTION ITEMS:**

1. **CONSIDERATION ON 3 APPEALS FROM THE OGDEN VALLEY PLANNING COMMISSION'S (OVPC) DECISION REGARDING CUP 2012-01 FOR A HELIPORT IN AN F-40 ZONE EAST OF GREEN HILL COUNTRY ESTATES AND APPROXIMATELY 2/3 OF A MILE FROM THE MAPLE STREET CUL-DE-SAC**

Sean Wilkinson, of the County Planning Division, stated that on 2/28/2012 the OVPC approved a conditional use permit for a heliport in the Ogden Valley subject to two conditions:

- 1) That the letter from the DWR be submitted to the Planning commission for their review, and
- 2) That the noise levels be tested within the 6-month approval period with the requirement that the applicant (Timothy Charlwood) return in six months for another Planning Commission review whether these two conditions were met. There were three appeals filed to that Planning Commission decision—one by the applicant and two by Green Hill Country Estates homeowners. The heliport complies with the regulations specified in the F-40 Zone including parcel area, elevation, setbacks, landing surface and FAA regulations.

The staff report included background of two pertinent Planning Commission meetings. On 1/3/2012, the County Commission adopted several amendments to the Zoning Ordinance regarding heliports in the Ogden Valley and on that same day the applicant submitted a conditional use application for a heliport in the F-40 Zone to be located east of Green Hill Country Estates (Green Hill), approximately 2/3 of a mile from the end of the Maple Street cul de sac/nearest residence. The applicant is proposing to operate the heliport on a seasonal (ski/snow) basis as a pickup/drop-off site for heli-skiing operations. The site will be used for a maximum of 3 days/week, during daylight hours only, with no more than 10 operations—take off and landing combined—per day due to FAA regulations. The proposed heliport has no permanent structures/facilities and no signage or lighting is proposed. The landing area is on an existing rock surface, which is free from trees and other obstructions. There will be no onsite refueling and there may be a portable latrine.

Access to the heliport is through Green Hill, which has private roads, and the applicant has provided staff with an agreement between the Green Hill Homeowners Association and the former owner of the property, which grants access from the Green Hill private roads to the applicant's property.

As part of the recent Zoning Ordinance amendment, the F-40 Zone now allows heliports as conditional uses subject to the following standards:

- 1) The heliport must be located on a single parcel of record not less than 40 acres in area. The proposal is on a 78-acre parcel,
- 2) The heliport must be in an elevation of at least 6,200 feet above sea level. The proposal has an elevation of approximately 6,300 feet above sea level,
- 3) The heliport must be at least 200 feet from any property line. The proposal is located slightly over 200 feet from the parcel's east boundary line and much more than 200 feet from the other boundaries,
- 4) The heliport landing surface must be dust proof and free from obstructions. This proposal is to be on an existing rock surface, which is free from dirt and there are no trees or other obstructions in the proposed landing's vicinity,
- 5) Prior to issuance of a conditional use permit for a heliport written FAA approval is required, however, after confirmation from the FAA Standards District Office in Salt Lake City, this heliport would not require inspections because it is seasonal, nothing is being constructed, and it meets the "intermittent use" definition.

Because it is a conditional use, two additional criteria must be met: 1) Reasonably anticipated detrimental effects of a proposed conditional use can be substantially mitigated by the proposal or by the imposition of reasonable conditions to achieve compliance with applicable standards. Examples of potential negative impacts include odor, vibrations, light, dust, smoke or noise. 2) The proposed use will comply with the regulations/conditions specified in the Zoning Ordinance and other applicable agency standards for such use. In considering this application, staff noted four potential detrimental impacts: safety, noise, dust, and wildlife impacts.

Staff determined that the above criteria have been met as follows:

**Safety** - the heliport will operate under visual flight rules and flights will occur only during daylight hours in good weather conditions. The FAA already restricts the number of flights/day and number of operating days/week. The anticipated approach and take off path are over the applicant's property, not over other residential areas.

**Noise** - impacts from the noise generated by helicopters using this site are minimized because the site is located 2/3 of a mile from the nearest dwelling. The heliport site is surrounded by the applicant's property and other vacant mountain properties. The setback requirement is 200 feet, this site is approximately 3,500 feet from the nearest dwelling

**Dust** - the heliport landing area is on an exposed rock surfaced, which will be covered with snow, and the applicant has stated it is free from dirt and other debris. The F-40 Zone requires that the landing area be maintained as a dust proof surface.

**Wildlife Impacts** - The Ogden Valley Sensitive Lands Ordinance was applied to the sanctuary subdivision, a proposed 6-six lot subdivision on this property. There is no construction, no new roads are being created, no fencing will be built or additional vegetation will be disturbed by the heliport use and it complies with the important wildlife habitat areas of the ordinance.

The flight path is regulated by the FAA once the helicopter leaves the heliport, and impacts to wildlife that may occur during the flight cannot be regulated by the Planning Division or Planning Commission. The county has received a review letter from the Division of Wildlife Resources (DWR).

The Planning Commission tabled the application on 1/24/12 and asked for the following six items: allow time for the DWR to review a conservation easement on adjacent property and provide comments on the heliport application. The Planning Commissioners wanted time to visit the site, to allow time for Zone II Drinking Water Source Protection issues to be thoroughly addressed, to allow time for test flights recorded by decibel meters to occur, to allow time for the Weber-Morgan Health and Weber Fire District's review comments, and to determine if the application constitutes a commercial business and would require a business license. Commissioner Gibson asked if the concerns had been addressed and Mr. Wilkinson said that some had. A field trip occurred but there was no helicopter to measure decibel readings. A business license will be required if the applicant operates commercially. Chair Dearden noted that at the 2/28/12 Planning Commission meeting there had been no DWR report available but it has since been received.

At the 2/28/12 meeting, after considering what they had requested at the 1/24/12 meeting, the Planning Commission voted to approve the heliport for 6 months to allow an opportunity for the flight operations anticipated by the applicant to be conducted with whatever variables may occur with the following conditions:

- 1) That flights, including landing and take offs, shall be measured by decibel readings and the findings to be presented to the Planning Commission,
- 2) That official review by the DWR shall be obtained during the six month approval period for review by the Planning Commission. Staff has not been onsite when decibel readings were taken. Mr. Charlwood included an email that speaks of his measuring the helicopter flying to/from this site.

Mr. Charlwood is appealing the Planning Commission's requirement for another review in August based on his application meeting the Zoning Ordinance requirements and appropriately mitigating potential negative impacts. Regarding the DWR letter, he has stated his intentions to work with the DWR on how/where helicopters approach/depart his land. He also stated that on 3/4/12 he was able to measure the sound produced by a helicopter at the heliport location and reported that the decibel average was 58 with a high of 70. Staff was not present for this flight but the reported decibel levels are in conformance with the decibel charts and calculations provided to the Planning Commission and also in the County Commissioners' packets.

The County Planning Division has determined that the application was complete and meets the applicable Zoning Ordinance requirements of Chapters 8 and 22C. Noise impacts were addressed in the drafting of the Zoning Ordinance for heliports, which the County Commission heard on 1/3/2012. A setback of 200 feet was deemed sufficient to address this concern due to the restrictive elevation, property area and zoning requirements.

The County Commission must determine if the heliport location provides adequate mitigation or if the Planning Commission was correct in requiring additional tests. Regarding the DWR letter, 4 of the 5 recommendations relate to flight paths and activities conducted while in the air, which cannot be regulated by the county. The other recommendation was to move the heliport further from the DWR conservation easement area, which would put it closer to dwellings in Green Hill. Mr. Wilkinson said that the County Commission should consider the validity of these recommendations in determining if they are applicable to the heliport application.

The second appeal is by Tom and Roxanne Taylor who are appealing the Planning Commission's decision based on it being rushed and not addressing issues of noise and wildlife impacts. The appeal states that three of the county's requirements were not met, including that the applicant 1) has not demonstrated that the heliport would be essential to the public convenience or welfare in the area, 2) has not demonstrated that the heliport would not impair the integrity and character of the surrounding properties and 3) has not been demonstrated that the use can be made compatible by imposing conditions. Mr. Wilkinson said that the Planning Commission did not rush their decision on the heliport application—the process included two regular Planning Commission meetings and a field trip to the site and months of work sessions in drafting the new heliport ordinance.

Staff comments regarding noise and wildlife impacts have been addressed. Regarding the comment that the three county requirements that have not been met, it appears that #1 and #2 come from Mr. Charlwood and due to the updated application not being available on the county's website, Mr. Charlwood had to submit a previous application that had criteria which had questions under the heading "Basis for Issuance of a Conditional Use Permit." However, in 2010 those five questions were summarized into two questions under "Criteria for Issuance of Conditional Use Permit" and Mr. Charlwood addressed those in his application, and also in the Planning Division staff report. Thus, the Taylors' first two questions in their appeal are no longer specific under the criteria that the Planning Commission considered—they were looking at the wrong ordinance. Regarding #3, the Planning Commission imposed the two conditions mentioned previously, which were intended to mitigate potentially detrimental effects from noise and wildlife disturbance.

The third appeal is by Donald and Dawn Kelly, who are appealing the Planning Commission's decision based on the following reasons: 1) the application was vague and failed to address concerns raised by the Planning Commission and residents, 2) the applicant provided misleading and inaccurate information regarding specifics of the use intended and failed to comply with requirements set forth by the Planning Commission to issue a permit, 3) the applicant has enjoyed extraordinary access to Weber County planning staff, which provided prejudicial information to the Planning Commission during the first hearing in 1/2012 and erred in various instructions to the OVPC, 4) the Planning Commission made it very clear during both meetings that when crafting the ordinance which they relied on to make their decision, the intention was to allow the heli-skiing operations to be based at the ski resorts or backcountry, not to permit operations which adversely affect residential areas of the Ogden Valley. In this respect, the Planning Commission failed to honor the spirit of the ordinance, 5) the proposal is lacking in every way that a previous proposal in Eden lacked, 6) this conditional use permit for a commercial heliport utterly fails to meet the requirements of the Weber County Zoning Ordinance Section 22C.

Staff comments regarding this appeal include: 1) The application included Mr. Charlwood's responses to the criteria listed in Chapter 22C-4, Criteria for Issuance of Conditional Use Permit. The initial application could not address concerns raised by residents or the Planning Commission because it was submitted well prior to the first Planning Commission meeting. 2) The minutes of the Planning Commission meetings are attached for the County Commission's review. The only conditions required by the Planning Commission are the two mentioned previously, which are under appeal. 3) The Planning Division's recommendation for approval of the heliport is based on a review of the applicable Zoning Ordinance criteria. The Planning Division provided information relating to the conditional use criteria for a heliport and the meeting minutes were provided for County Commission review. 4) The ordinance requirements are very clear and objective. Heliports are conditional uses, which allow the Planning Commission to attach conditions intended to mitigate potential detrimental impacts. 5) This application is specific to Mr. Charlwood's property and stands on its own. 6) Mr. Charlwood's responses to Chapter 22C-4 are in the Commission's packets.

In considering the appeals, the County Commission may uphold or reverse the decision of the Planning Commission and impose any additional conditions that it may deem necessary in granting the appeal. The decision of the County Commission is final.

Mr. Charlwood said that he visited with Scott Walker of the DWR, who stated he has no jurisdiction over anything Mr. Charlwood does within his property but desired to work with Mr. Charlwood regarding wildlife habitat. Mr. Charlwood said that the habitat is on the southern lower slopes and a long way from the heliport. The DWR uses helicopters, flying very low, to count and check on the animals, particularly after big snowstorms, and it does not oppose this operation. Mr. Walker had asked that Mr. Charlwood try to fly 500 feet above any habit areas. Mr. Charlwood said that his helicopters would be in excess of 500 feet within 10 seconds of take off and at 9,500 feet within a minute and it would all be over his own terrain and would not be flying over any residential or habitat areas. He said that the pilots who would be involved in heli-skiing also work with the DWR and would use the "friendly flying" approach, which is quieter and that trucks make more noise. The heliport is set back 300 feet. He had provided charts, which came from university studies of helicopters, and many are three times larger and noisier than the ones he uses, and at the distance from the nearest residences the sound level is 17 decibels. The expert that visited the site suggested that it might be the same as a Harley Davidson at 100 ft. In the area, there are snowplows, large trucks, motorcycles, ATVs, etc., which are in excess of 17 decibels. During a helicopter sound reading which he recorded, it peaked at 70 decibels for a flash but most were at 58 decibels. He has done all the mitigation possible and reiterated that this is seasonal and FAA rules allow 3 days maximum/week. Chair Dearden asked if the same flight path would be used every time and Mr. Charlwood said that it will be to the north. Mr. Charlwood addressed Chair Dearden's question stating that moving the helipad to a more central location on his property would move it closer to homes, that he has placed it the furthest possible distance from homes.

The Taylors were not present.

Don Kelly, Greenhill resident just south of Mr. Charlwood's property, stated that Greenhill property surrounds Mr. Charlwood's property on the south and on the east. Mr. Kelly is an active, private pilot, trained on helicopter flying operations who spent 10 years working for the Utah Department of Natural Resources as a Park Ranger working closely with wildlife conservation officers of DWR and has a Bachelors Degree in Park Resource Management. He is familiar with motor vehicle and aircraft impact on wildlife, and is an avid outdoorsman and environmentalist.

Mr. Kelly said that Mr. Charlwood applied for a permit to operate a commercial heliport on his property to the north of his neighborhood. The initial application included three sites all on his property, all close to common community property belonging to Greenhill HOA. The proposal is 200 feet from the property boundary on the east side, which is Greenhill property. The Planning Division determined that only one site met the zoning requirements and, determined prior to the first OVPC meeting, to give a favorable recommendation on the third site. He believes that the OVPC, acting largely on the recommendation of planning staff, provided a temporary 6-month approval of the application to obtain additional data. He said it appears no one is happy with the OVPC's process, including Mr. Charlwood and the appellants and would like more work on this. His issues are with the artificially imposed deadline and limiting the issue to a couple meetings to make a decision. The applicant failed to meet the standard imposed by the OVPC for sound level testing—it has not occurred. There was a site visit scheduled at the first OVPC meeting, which Mr. Kelly attended, expecting a helicopter to land but there was only a medical helicopter apparently on route to Wolf Mountain and opposite of the Ogden Valley. He did not even see it and it does not constitute a sound level test. He takes issue with Mr. Charlwood simply submitting information on a test that he has done.

The Green Hill property is all in a wildlife conservation easement, however, DWR's letter speaks very clearly to its wishes and Mr. Kelly takes issue with Mr. Charlwood representing to some degree what DWR wants. He has no issue with Mr. Charlwood developing his property as a residential subdivision or personal use of the heliport, only has an issue with its use as commercial. He spent several hours last Sunday taking a survey in the neighborhood asking two questions: whether residents knew of the heliport's application and if they felt the county should grant the permit. Every person that signed the survey believed the county should not grant the permit, with one exception. It would be appropriate for Mr. Charlwood to work with the HOA's concerns. In regards to Mr. Kelly's comment concerning road access, he said it is not an issue the Commission can address. From all that he has read, there is indication of an agreement in place that they have access to the property on those roads.

Commissioner Zogmaister said she was pleased with the Planning Commission's work in resolving some of the questions. Some of the conditions set forth in the ordinance were measurable—setback and elevation. She is concerned with someone doing a survey of whether they want something in the neighborhood because of property rights and of being within the law. Some of the questions that are measurable have been addressed with DWR, water, etc. The applicant meets the current ordinance.

Commissioner Gibson asked if the applicant has been operating since the OVPC approved this with the 6-month review and Mr. Charlwood responded he asked a pilot to do a test run to make his recording from the top of Maple Drive. The pilot told him he would fly fully loaded, at full power and make all the noise he could. There has been little snow and little opportunity to operate. Chair Dearden noted that a test flight had been scheduled and asked why one did not take place. Mr. Charlwood said that the request from the Planning Commission chair that he bring a helicopter in for measurement was never agreed to and it would cost him \$2,000. He was asked on Tuesday if a helicopter could be available on Saturday and he had told them he could not make that guarantee and this was clear to the planning commissioners. The medical helicopter flew to the side of them and they confirmed it was at 9,500 feet. He had to ask the commissioners to turn their vehicles off to measure the sound because they could not hear the helicopter with vehicles running and people talking. Chair Dearden referred to Mr. Kelly's comment that what is noise to one person is not to another. Commissioner Gibson said that for independent verification Mr. Charlwood should have notified Mr. Wilkinson when he was going to take his readings. Chair Dearden said that the timeframe for approval is based upon how quickly a decision can be made.

Regarding sound testing, Mr. Kelly said that DWR's letter was received after the Planning Commission's decision and it would have been nice to have the two conditions satisfied before they made their decision. Commissioner Zogmaister referred to Mr. Kelly's comment that he is not opposed to personal use but is opposed to commercial use and he said that if Mr. Charlwood will be running a business with multiple helicopter flights and people invited to heli-ski are paying for it he does not see them as guests.

Referring to Mr. Kelly's comment about taking the 6-month arbitrary timeframe out and make a decision, Commissioner Gibson asked Mr. Wilkinson's opinion on what there may be to gain by allowing the 6-month review to remain in place. Mr. Wilkinson said that according to Mr. Charlwood the heli-skiing flight season is over but he can arrange to obtain readings and get more data. Chair Dearden noted that if conditional use requirements are not met a permit can be revoked.

Ricky Hatch, County Clerk/Auditor, referred to an email in the packet sent by Mr. Charlwood to Mr. Wilkinson on 1/25/12 that stated, "I am not operating a business of any kind. I am inviting people to my land...my use is seen as a taxi stop or pick-up point...no income, no agreements with any operator...simply by my invitation within the rules."

Mr. Wilkinson said that one of the reasons one of the six conditions was put in at the 1/24/12 meeting was because Mr. Charlwood had stated it was not his intent to run a business necessarily; it was to bring people to see his land for purchasing lots. If there will be a business operating from that property, than a business license is required, if he is just bringing people to his property and the helicopter flies them away, there is not much to regulate. Commissioner Gibson said that if personal or business fits under the ordinance, then the use is irrelevant.

Commissioner Zogmaister noted that decibel levels was not included in the ordinance because it is a difficult item to measure because there are many variables such as the time of day, barometric pressure, etc., that Mr. Charlwood had said sound measurement has been an issue and it is the reason he obtained the university studies. Mr. Charlwood is not opposed to setting a decibel reading because he is confident they will not exceed it. Mr. Kelly said that the State has a noise ordinance for motorboats applied as a stationary sound test and the other is a shoreline test and suggested using the shoreline test for motorboats.

Commissioner Zogmaister moved to not support the decision of the Planning Commission and that approval be granted based upon the fact that the applicant has met the current ordinance requirements. Discussion ensued. Chair Dearden asked if the motion would then be to approve the Planning Commission's conditional use approval with the two stipulated conditions but upholding Mr. Charlwood's appeal to the 6-month probation. Commissioner Zogmaister asked about directing the Planning Commission to go back to do any deemed necessary research regarding noise but Commissioner Gibson expressed concern that no conditions have been set on noise level testing for this conditional use permit and believed that was what the Planning Commission was trying to handle during the 6-month condition. Chair Dearden said that the motion could say that the noise levels need to be tested as a condition, however, it is very difficult to set the elevation and setback levels. Commissioner Gibson asked that if this item is approved without the 6-month period and specific requirements are not set, could the permit really be revoked if there is some perceived problem. The commissioners questioned what would the applicant be violating without a set noise level to measure. Mr. Wilson noted that some objective standards need to be set. Mr. Wilkinson said that the research conducted by the Planning Division is in the Commission's packets, that they looked at several different decibel charts, which include helicopter noise, they performed a calculation test that measured sound at 2/3 miles from the nearest dwelling which resulted at about 70dbs. They specifically did not put a decibel level in the ordinance because it is near impossible to set that would be acceptable in every location this may impact in the Ogden Valley. Commissioner Gibson did not necessarily wish to set a limit on this conditional use permit because there are so many variables but needs to know what the sound level actually is and asked what would need to be done. Mr. Wilkinson responded that a test would need to be performed where the county was present measuring and observing or a professional measuring/certifying it, however, he reiterated that it is difficult to measure because of the variables and that is the reason for the 6,200 feet elevation and 200 feet setback required by the ordinance vs. the actual setback of the heliport, which is 3,500 feet. Commissioner Zogmaister moved to overturn the Planning Commission's decision but granting the Mr. Charlwood's appeals, removing the 6-month condition, that the operation must be a seasonal use December-April, the hours of operation must be daylight hours, but noise levels are not addressed at this time to try it to see if the items in the ordinance intended to mitigate the noise—elevation and setbacks—actually accomplish that; Commissioner Gibson seconded, all voting aye.

2. **RESOLUTION APPOINTING MEMBERS TO THE OGDEN VALLEY PLANNING COMMISSION - RESOLUTION 8-2012**

Rob Scott, County Planning Division Director, stated that the County Commission determined that existing planning commissioners Kevin Parson and Pen Hollist should be retained to serve another term on this Planning Commission. This is the end of Commissioner Parson's first term and Commissioner Hollist had served one year.

Commissioner Gibson moved to adopt Resolution 8-2012 reappointing Kevin Parson and Pen Hollist to the Ogden Valley Township Planning Commission to serve four-year terms expiring 6/30/2016; Commissioner Zogmaister seconded.

Roll Call Vote:

Commissioner Zogmaister.....aye  
Chair Gibson.....aye  
Chair Dearden.....aye

3. **RESOLUTION APPOINTING MEMBERS TO THE WESTERN WEBER COUNTY PLANNING COMMISSION - RESOLUTION 9-2012**

Rob Scott, Planning Division Director, stated that the County Commission determined that the existing planning commissioners Jannette Borklund and John Parke should be retained to serve another term on this Planning Commission.

Commissioner Gibson moved to adopt Resolution 9-2012 reappointing Jannette Borklund and John Parke to the Western Weber County Planning Commission to serve four-year terms expiring 6/30/2016; Commissioner Zogmaister seconded.

Roll Call Vote:

Commissioner Zogmaister.....aye  
Chair Gibson.....aye  
Chair Dearden.....aye

4. **CONTRACT WITH OGDEN SCHOOL DISTRICT RELATING TO RECREATION, ARTS, MUSEUMS AND PARKS FUNDING - CONTRACT C2012-52**

David Wilson, Deputy County Attorney, stated that this contract is from last year's cycle and Reed Richards, Deputy County Attorney, had done the negotiating with the School District. The issue had been to ensure that the public can use the facility.

Commissioner Zogmaister moved to approve Contract C2012-52 with the Ogden School District relating to Recreation, Arts, Museums and Parks funding. Commissioner Gibson seconded, all voting aye.

5. **CONTRACT WITH SWANSON TACTICAL TRAINING CENTER, LLC FOR A FACILITIES USE AGREEMENT FOR FIREARMS TRAINING - CONTRACT C2012-53**

County Undersheriff Kevin McLeod, presented this contract renewal in the amount of \$20,100, a little less than last year (\$21,637) as stipulated by the contract. The Sheriff's Office is looking for a public range. He addressed the commissioners' questions stating he was unaware of a law enforcement agency outside of the county that uses a private facility for their training, and in order to receive the lower rate, the county pays the cost upfront and Swanson reimburses for unused hours. Commissioner Gibson moved to approve Contract C2012-53 with Swanson Tactical Training Center, LLC for a facilities use agreement for firearms training; Commissioner Zogmaister seconded, all voting aye.

**6. APPROVAL OF THE WEBER COUNTY 2012 ELECTIONS POLLING LOCATIONS**

Jennifer Morrell, County Elections Director, presented the list of designated polling locations. The county is divided into 159 precincts with 63 maximum polling locations, 5 of which are vote centers and which she listed.

Commissioner Zogmaister moved to approve the Weber County 2012 Elections Polling locations; Commissioner Gibson seconded, all voting aye.

**F. PUBLIC HEARING**

1. Commissioner Zogmaister moved to adjourn the public hearing and reconvene the public hearing; Commissioner Gibson seconded, all voting aye.
2. **PUBLIC HEARING ON A REQUEST TO AMEND THE EDGEWATER BEACH RESORT P.R.U.D. (CUP 2003-12) SITE PLAN WITH CUP 2012-02**

Ben Hatfield, of the County Planning Division, showed area maps. He stated that the existing site plan was approved in 2003 and the applicant is making major changes to it. This P.R.U.D. is located in the CVR-1 Zone on the south side of Pineview Reservoir. The project will have a selected mix of uses with a variety of housing types and a couple of commercial buildings. The Ogden Valley Planning Commission recommended approval on 3/27/12 and staff recommends approval.

Chair Dearden invited public comments and Ray Bertoldi, project architect, showed a presentation stating that the project's density has been reduced from 165 to 111. At the entry of the project will be 5,300 square feet of commercial space designed as neighborhood shops in two buildings. There are storage barns tucked in the hillside to provide residents with out-of-site storage for boats, RVs, etc. The clubhouse and pool will be installed in phase 1. There are no buildings over 23 feet tall and they are trying to reduce the impact of density on air space. Commissioner Zogmaister asked to whom the gravel road belongs on the west side and Mr. Bertoldi responded that it is a county road.

3. Commissioner Zogmaister moved to adjourn the public hearing and reconvene the public meeting; Commissioner Gibson seconded, all voting aye.
4. **ACTION ON PUBLIC HEARING.**
5. **F.2.- PUBLIC HEARING TO AMEND EDGEWATER BEACH RESORT P.R.U.D SITE PLAN, CUP 2012-02**

Commissioner Gibson moved to amend the Edgewater Beach Resort P.R.U.D.; Commissioner Zogmaister seconded, all voting aye.

**G. ASSIGN PLEDGE OF ALLEGIANCE & THOUGHT OF THE DAY FOR TUESDAY, APRIL 17, 2012, 10 A.M.**

**H. PUBLIC COMMENTS:** None

I. CLOSED MEETING TO DISCUSS STRATEGY RELATING TO PENDING OR IMMINENT LITIGATION AND THE CHARACTER, COMPETENCE OR MENTAL HEALTH OF AN INDIVIDUAL

Commissioner Gibson moved to convene a closed meeting to discuss strategy relating to pending or imminent litigation and the character, competence or mental health of an individual; Commissioner Zogmaister seconded.

Roll Call Vote:

Commissioner Zogmaister.....	aye
Chair Gibson.....	aye
Chair Dearden.....	aye

No action was taken on the closed executive session

J. ADJOURN

Commissioner Gibson moved to adjourn at 1:12 p.m.; Commissioner Zogmaister seconded, all voting aye.

Attest:

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Craig L. Dearden, Chair  
Weber County Commission

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Ricky D. Hatch, CPA  
Weber County Clerk/Auditor

**MINUTES  
OF THE BOARD OF COMMISSIONERS OF WEBER COUNTY**

Tuesday, May 1, 2012 - 10:00 a.m.  
2380 Washington Blvd., Ogden, Utah

*In accordance with the requirements of Utah Code Annotated Section 52-4-7(1)(d), the County Clerk records in the minutes the names of all citizens who appear and speak at a County Commission meeting and the substance "in brief" of their comments. Such statements may include opinion or purported facts. The County does not verify the accuracy or truth of any statement but includes it as part of the record pursuant to State law.*

**COMMISSIONERS PRESENT:** Craig L. Dearden, Chair, Kerry W. Gibson and Jan M. Zogmaister.

**OTHERS PRESENT:** Ricky D. Hatch, County Clerk/Auditor; Chris Allred, Deputy County Attorney; Douglas Larsen, of the Clerk/Auditor's Office, took minutes.

**A. WELCOME** - Chair Dearden

**B. PLEDGE OF ALLEGIANCE** - Jan Wilson

**C. THOUGHT OF THE DAY** - Commissioner Gibson

**D. CONSENT ITEMS:**

1. Purchase Orders for \$229,936.33
  2. Warrants #285096-285348 for \$451,827.54
  3. Minutes for the meetings held on April 10 and 24, 2012
  4. A new business license
  5. Surplus 4 ballot boxes and 4 voter booths from the Clerk/Auditors Office
  6. ACH payment to US Bank for \$79,812.70 for purchasing card transactions made through the billing cycle ending April 16, 2012
  7. Retirement Agreement with Mary Ellen George - Contract C2012-66
- Commissioner Gibson moved to approve the consent items, holding the minutes; Commissioner Zogmaister seconded, all voting aye.

**E. ACTION ITEMS:**

1. **FINAL READING ON STAFF AMENDMENTS TO THE COUNTY ZONING ORDINANCE CHAPTER 1 (GENERAL PROVISIONS), CHAPTER 9-A (SHORELINE ZONE (S-1), CHAPTER 23 (SUPPLEMENTARY AND QUALIFYING REGULATIONS), CHAPTER 23 (SUPPLEMENTARY AND QUALIFYING REGULATIONS), CHAPTER 24(PARKING AND LOADING SPACE, VEHICLE TRAFFIC AND ACCESS REGULATIONS), CHAPTER 29 (BOARD OF ADJUSTMENT), CHAPTER 31 (ADMINISTRATION), AND CHAPTER 36-B (HILLSIDE DEVELOPMENT REVIEW PROCEDURES AND STANDARDS) REGARDING THE WEBER COUNTY BOARD OF ADJUSTMENT (BOA) - ORDINANCE 2012-7**

Sean Wilkinson, of the County Planning Division, noted that this item was discussed last week and the commission had directed Mr. Wilkinson to include language requiring a signature by the BOA chair or acting chair on the notice of decision. Chair Dearden suggested changing the language to BOA or "designee" instead of acting chair and Mr. Wilkinson made that change. Additionally, there had been discussion whether the three former special exceptions concerning flag lots, access by private right-of-way or access at a location other than across the front lot line should be administrative approvals or by the Planning Commission. The County Commission had questions last week and Mr. Wilkinson addressed those today. Commissioner Zogmaister said that in most cases staff is most qualified on those decisions, but she does not want to bypass the Planning Commission because they are important—they come from the specific areas and can be more closely attuned to what is going on in the communities and their desires. Mr. Wilkinson read the definition of land use authority, stating that it is one of the proposed amendments because currently this is not defined in the ordinance. He agreed that staff probably has more technical expertise on these issues but the Planning Commission is the land use authority for most of the administrative decisions.

# **EXHIBIT**

## **D**

Minutes of the Ogden Valley Township Planning Commission meeting held September 25, 2012 in the Weber County Commission Chambers, commencing at 5:00 p.m.

Present: Kevin Parson, Chair, Pen Hollist, Greg Graves, Ann Miller, Pen Hollist, John Howell, Laura Warburton  
Excused: Dennis Montgomery

Staff Present: Rob Scott, Director; Sean Wilkinson, Planner, Ben Hatfield, Planner, Scott Mendoza, Planner, Sherri Sillitoe, Secretary

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***Pledge of Allegiance***  
***Roll Call***

**1. Minutes:**

1.1. Approval of the August 28, 2012 minutes

Commissioner Howell stated that on Page 4, the following sentence should be amended: "The Church down the street 37 ft. (angled parking)."

Chair Parson declared the minutes of the August 28, 2012 meeting approved as amended.

**2. Consent Agenda:**

**2.1. DR 2012-11**

Consideration and action on Design Review #2012-11 regarding a request to install a gate at the entrance of Falcon Crest Subdivision, 8900 E 1800 S (Falcon Crest HOA, Applicant, Brian DeHart, Agent)

**2.2. UVE090512 and**

**SUBVAC 2012-01**

Consideration and action on a request for final approval of a condominium plat for Edgewater Beach Resort Phase 1 Amended PRUD and a request to vacate the Condominium plat for Edgewater Beach Resort Phase 1, 6350 East Highway 39 (Celtic Bank Applicant)

MOTION: Commissioner Hollist moved to approve Consent Agenda Items 2.1 and 2.2 as written. Commissioner Graves seconded the motion. A vote was taken and the motion carried (7-0).

**3. Old Business:**

**3.1. CUP 2011-06**

Consideration and action on a conditional use permit application for a public utility substation (cellular site) located approximately at 95 Ogden Canyon Road (David Hardman, Ogden Weber Chamber of Commerce, Owner, Nefi Garcia, Agent for TAIC)

Ben Hatfield presented a staff report and indicated that the applicant is requesting approval of a conditional use permit for a public utility substation (cellular site). The FR-1 Zone allows a "public utility substation" as a conditional use. This site is located on an 11.37 acre property owned by the Ogden Weber Chamber of Commerce. The Ogden Valley Planning Commission reviewed a similar plan on this property on February 28, 2012. Due to concerns about the historic remains of a kiln on the site, a new location has been proposed. The environmental engineering firm has reviewed the site and submitted a letter.

The revised site consists of a 50 foot by 23 foot leased area which will be surrounded by an 8 foot tall cedar fence. One 26 foot by 12 foot by 10.5 foot tall equipment shelter will house the mechanical equipment for the site and will be connected to a 50 foot tall monopole cellular tower. The pole diameter and specifications have not been submitted. Affixed to the pole will be an array of 4 antenna panels (8 foot) at a height of 45 feet. There are no lights associated with this cellular site. Access to the site will be adjacent to the parking lot drive.

**EXHIBIT**

**E**

Minutes of the Ogden Valley Planning Commission Work Session held March 26, 2013, in the Weber County Commission Chambers, commencing at 5:00 p.m.

**Present:** Ann Miller, Vice Chair; Dennis Montgomery; Laura Warburton; John Howell; Greg Graves;

**Absent/Excused:** Kevin Parson; Pen Hollist

**Staff Present:** Rob Scott, Planning Director; Ben Hatfield, Planner; Chris Allred, Legal Counsel; Kary Serrano, Secretary

\*Pledge of Allegiance

\*Roll Call

**1. Petitions, Applications and Public Hearings:**

**1.1. Administrative Items:**

**a. New Business:**

- 1. SV 01-13:** Consideration and action on a request to recommend the vacation of 6300 East, located between Highway 39 and Pineview Reservoir (Reese Howell, Applicant)

Ben Hatfield said the applicant is requesting the vacation of 6300 East, located between Highway 39 and Pineview Reservoir. The road serves one home with the remainder agricultural land in a conservation easement. The applicant has approval from UDOT for the existing access to Edgewater Beach Resort Condominiums. UDOT would now like to limit the distance between access points which serve multiple units. The access to the condominiums was built in 2005. The applicant is requesting vacating 6300 East because there are no improvements on the State Highway 39. This access will remain as a private drive for the residents on the east side of this road. The applicant has stated that the Fire District has no concerns with one access to the condominium project. This vacation request will not affect the General Plan. Staff recommends approval of the request to vacate 6300 East, because there is no development potential.

John Reeve, Project Engineer for applicant, said in 2005 the developer at that time developed that 6300 East road. A Fourplex accesses the paved road and the new owners changed the plan and decreased the density by half of what was then. As they have been talking to UDOT they found out that their desire is not to have two roads coming out onto the highway that close together. They have anticipated that they would decrease the dedicated road which is not being used but by one owner; it's a residence left over from the road that runs across the reservoir before it had been enlarged not knowing that it was a dedicated road. Their desire is to meet that main access on 6300 E. and still leave it there for a private access. They will deed them another 12 feet so they would be able to have the whole road and vacate the dedicated road of 6300 E.

Commissioner Graves asked the width for the rights-of-way for that road currently. On the plan it states 50 feet and the applicant's intention is to dedicate 12 feet adjacent property is that correct. Mr. Hatfield replied that is correct.

**MOTION:** Commissioner Warburton moved to approve SV 01-13 for the request to vacate 6300 East with the findings that it has no impact on the general plan so they can proceed with this project. Commissioner Montgomery seconded.

**DISCUSSION:** Commissioner Graves said with the discussion that they had and the motion, the assumption and intent is that it automatically includes the dedication of the 12 feet to the neighbor. He was clear with that and just wanted to make sure that was part of the discussion and everyone was under the same understanding that would happen.

**VOTE:** A vote was taken with all members present voting aye. Motion Passed (5-0)

- 2. CUP 2013-08:** Consideration and action on an administrative application, Conditional Use Permit (CUP) 2013-08 (Edgewater Beach Resort PRUD) a request to amend the site plan removing secondary access due to the vacation of 6300 East (Celtic Bank, Applicant)

Ben Hatfield said the applicant is requesting an amendment to the existing approved site plan for Edgewater Beach Resort. The Ogden Valley Planning Commission recommended approval of the current design on March 27, 2012. As the

development is adjacent to Highway 39, the applicant has been working with the Utah Department of Transportation (UDOT) on improvements and access to Highway 39. There have been concerns with the close proximity of 6300 East and the proposed entrance to the development. The applicant is requesting that the roadway for 6300 East be vacated and the ownership remains with the adjacent land owners. The proposed plans have only slight modifications recommended by the Engineering Division. The existing site plan was approved in conformance with the Ogden Valley General Plan in 2003. These recently approved amendments reduce the overall density numbers for Ogden Valley and reduce the heights and mass of the buildings located closest to the reservoir. Staff recommends approval of this amended conditional use application subject to the applicant meeting the conditions listed in the staff report and any conditions required by the reviewing agencies.

John Reeves said they saw that in order to have that access to the existing gravel road it was not advantageous for the people who use that road so they approached the Fire Marshal. In speaking with him, he did not have a problem with the one access provided they put sprinklers in the building and they have agreed with that. They will not impact that private driveway and reduce the density which is half of what was proposed before. The dedication plat for their phases will include that 12 feet deeded to the owners for the access road.

Commissioner Howell asked if the hammerhead and adjacent dirt road separated by a curve road. John Reeves replied they have a curve on the hammerhead, a fence, and also an existing ditch between the two. They are not anticipating people going over the curb and into the road.

**MOTION:** Commissioner Warburton moved to approve Conditional Use Permit CUP 2013-08 (Edgewater Beach Resort PRUD) a request to amend the site plan removing secondary access due to the vacation of 6300 East subject to all staff and agency requirements. Commissioner Howell seconded.

**DISCUSSION:** Commissioner Warburton said in the extreme case could the Fire Department could go down that dirt road and get access if they needed to. Commissioner Montgomery said with the ditch and the fence that makes it difficult to get to that second access but it shouldn't be a problem because the buildings would be sprinkled. There is still some access; the rear roads are wide enough that they could get trucks through there if they needed to. Commissioner Warburton said she was nervous having only one access in case of a disaster. Commissioner Graves said that two accesses are always preferred but they just eliminated the second access which was in conflict with UDOT's requirements. Commissioner Montgomery said there is the Pineview on the north side with the ravine on the east side that makes it more difficult. Commissioner Howell said as for earthquakes, for single family home that are being constructed here, that would be the safest place to be, and the size of road seems to be adequate for any type of evacuation.

**VOTE:** A vote was taken with all members present voting aye. Motion Passed (5-0)

**2. Public Comment for Items not on the Agenda:**

Steve Clarke, who resides in Eden, and is Chairman of GEM Committee, said that it's been a month when he asked for an update on the study of nodes in the valley. He requested an update and a plea for continued activity and priority. They just finished another town meeting on the Summit and it's absolutely clear that there is development pressure in the valley in particular lots of money being spent by the Summit; it's ever more urgent to get this planning to help manage the growth. Robert Scott replied they have been involved with the Powder Mountain project and have not had the opportunity to work on that.

Vice Chair Miller requested a timeline. Mr. Scott replied that would all depend on the current planning activities and they are trying to allocate some time but are in a quandary of how they plan to accomplish all of this. Once they have identified some options, they will bring that back to this Planning Commission as part of the work session.

There was a brief discussion on working on the project of nodes.

**3. Remarks from Planning Commissioners:** No comments from the Planning Commission.

4. **Report of the Planning Director:**

Rob Scott said that they will not have a regular work session next week. The next meeting will be on April 9, a joint hearing with the Western Weber Planning Commission to review the new Land Use Code and after that they will have a work session with both Planning Commissions dealing with the topic of motions and findings lead by Mr. Allred. There was an email sent by Rob Scott to remind the members to please mark their calendars.

5. **Remarks from the County Attorney:** There were no comments from the County Attorney.

6. **Adjourn:** The meeting was adjourned at 5:35 p.m.

Respectfully Submitted,

Kary Serrano, Secretary,  
Weber County Planning



## OGDEN VALLEY TOWNSHIP PLANNING COMMISSION

### REGULAR PLANNING MEETING AGENDA

Tuesday, March 26, 2013

5:00 p.m.

- Pledge of Allegiance
- Roll call

#### 1. Petitions, Applications and Public Hearings

##### 1.1 Administrative Items

##### a. New Business

1. **SV 01-13** Consideration and action on a request to recommend the vacation of 6300 East, located between Highway 39 and Pineview Reservoir; Reese Howell, Applicant
2. **CUP 2013-08** Consideration and action on an administrative application, Conditional Use Permit (CUP) 2013-08 (Edgewater Beach Resort PRUD) a request to amend the site plan removing secondary access due to the vacation of 6300 East; Celtic Bank Applicant

2. Public Comment for Items not on the Agenda
3. Remarks from Planning Commissioners
4. Report of the Planning Director
5. Remarks from the County Attorney
6. Adjourn

*The meeting will be held in the Weber Center, County Commission Chambers 1<sup>st</sup> Floor, 2380 Washington Blvd., Ogden, Utah.  
The pre-meeting will held in Room 108 at 4:30 p.m., no decisions are made*



*(In compliance with the American with Disabilities Act, persons needing auxiliary services for these meetings should call the Weber County Planning Division office at 801-399-8791)*





## Staff Report to the Ogden Valley Planning Commission

Weber County Planning Division

### Synopsis

#### Application Information

**Application Request:** Consideration and / or action on an administrative application, Conditional Use Permit (CUP) 2013-08 (Edgewater Beach Resort PRUD) a request to amend the site plan removing secondary access due to the vacation of 6300 East.

**Agenda Date:** Tuesday, April 10, 2012

**Applicant:** Celtic Bank

**File Number:** CUP 2013-08

#### Property Information

**Approximate Address:** 6350 East Highway 39

**Project Area:** 13.08 Acres

**Zoning:** Commercial Valley Resort Recreation Zone (CVR-1)

**Existing Land Use:** PRUD Development

**Proposed Land Use:** PRUD Development

**Parcel ID:** 20-013-0020 and 20-134-0005

**Township, Range, Section:** T6N, R1E, Section 13

#### Adjacent Land Use

<b>North:</b>	Pineview Reservoir	<b>South:</b>	Residential
<b>East:</b>	Residential	<b>West:</b>	Agriculture

#### Staff Information

**Report Presenter:** Ben Hatfield  
bhatfield@co.weber.ut.us  
801-399-8766

**Report Reviewer:** SW

### Applicable Ordinances

- \* Weber County Zoning Ordinance Chapter 9C (CVR-1 Zone)
- \* Weber County Zoning Ordinance Chapter 22C (Conditional Uses)
- \* Weber County Zoning Ordinance Chapter 18C (Ogden Valley Architectural, Landscape, and Screening Standards)
- \* Weber County Zoning Ordinance Chapter 22D (Planned Residential Unit Development)
- \* Weber County Zoning Ordinance Chapter 24 (Parking)
- \* Weber County Zoning Ordinance Chapter 32B (Ogden Valley Signs)
- \* Weber County Zoning Ordinance Chapter 39 (Ogden Valley Lighting)
- \* Weber County Zoning Ordinance Chapter 43 (Ogden Valley Sensitive Lands)

### Type of Decision

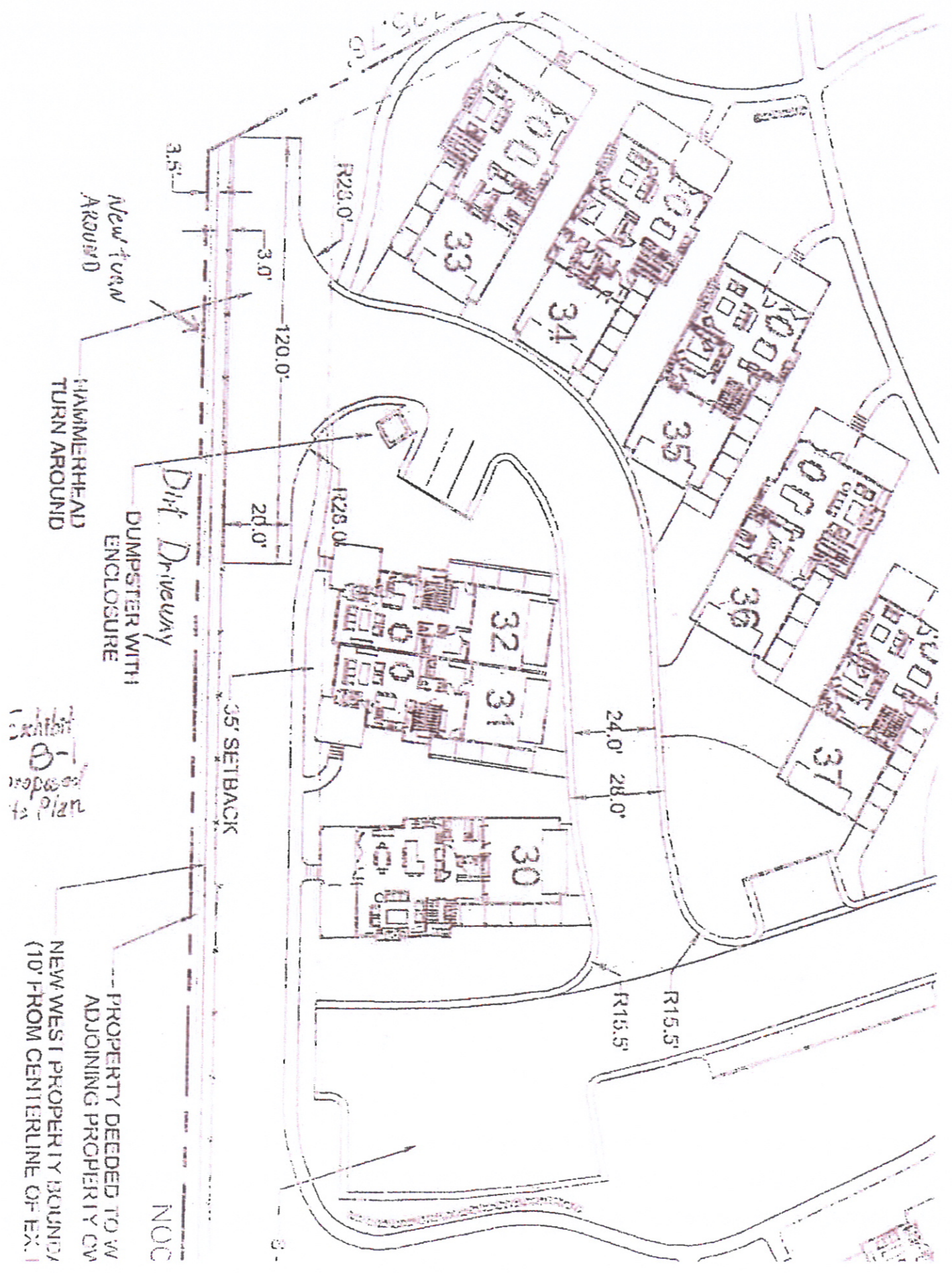
**Administrative Decisions:** When the Planning Commission is acting as a land use authority, it is acting in an administrative capacity and has much less discretion. Examples of administrative applications are design reviews, flag lots, and subdivisions. Administrative applications must be approved by the Planning Commission if the application demonstrates compliance with the approval criteria.

### Background

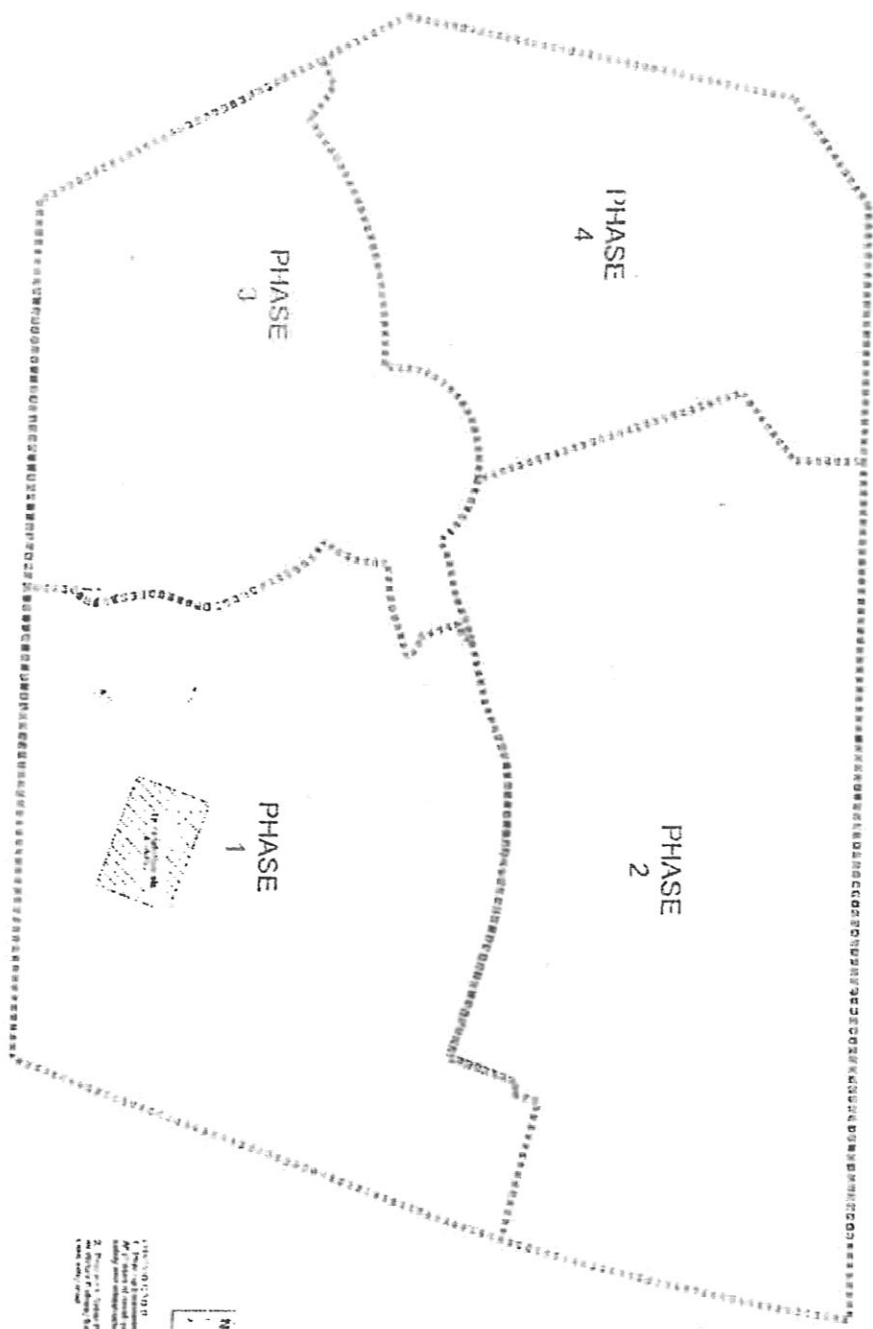
The applicant is requesting an amendment to the existing approved site plan for Edgewater Beach Resort. The Ogden Valley Planning Commission recommended approval of the current design on March 27, 2012. As the development is adjacent to Highway 39, the applicant has been working with the Utah Department of Transportation (UDOT) on improvements and access to Highway 39. There have been concerns with the close proximity of 6300 East and the proposed entrance to the development. The applicant is requesting that the roadway for 6300 East be vacated and the ownership remains with the adjacent land owners. The home which uses the dirt road may continue to use it as a private driveway.

Map 1









1. The site is located in the City of...  
2. The site is located in the City of...  
3. The site is located in the City of...

NOTES:  
1. The site is located in the City of...  
2. The site is located in the City of...  
3. The site is located in the City of...

3/15/11  
B-5

S1.2

EDGEWATER ESTATES

BERTOLDI ARCHITECTS  
1000 10th Avenue, Suite 100  
Boulder, CO 80502  
Phone: 303.440.1000  
Fax: 303.440.1001  
www.bertoldiarchitects.com

**EXHIBIT**

**F**

**MINUTES  
OF THE BOARD OF COMMISSIONERS OF WEBER COUNTY**

Tuesday, April 9, 2013 - 10:00 a.m.  
2380 Washington Blvd., Ogden, Utah

*In accordance with the requirements of Utah Code Annotated Section 52-4-7(1)(d), the County Clerk records in the minutes the names of all citizens who appear and speak at a County Commission meeting and the substance "in brief" of their comments. Such statements may include opinion or purported facts. The County does not verify the accuracy or truth of any statement but includes it as part of the record pursuant to State law.*

**COMMISSIONERS PRESENT:** Kerry W. Gibson, Chair, Jan M. Zogmaister, and Matt G Bell.

**OTHERS PRESENT:** Ricky D. Hatch, County Clerk/Auditor; Chris Allred, Deputy County Attorney; and Fátima Fernelius, of the Clerk/Auditor's Office, who took minutes.

**A. WELCOME** – Chair Gibson

**B. PLEDGE OF ALLEGIANCE** – Chris Allred

**C. THOUGHT OF THE DAY** - Commissioner Bell

**D. CONSENT ITEMS:**

1. Purchase Orders for \$177,253.35
2. Warrants #296537 - #296717 for \$649,557.36
3. Minutes for the meetings held on March 26 and April 2, 2013
4. New business license
5. Contracts with the following entities for RAMP Grant funding:
  - Boys & Girls Club – Contract C2013-67
  - Eccles Community Art Center – Contract C2013-68
  - Egyptian Theater Foundation 1 – Contract C2013-69
  - Egyptian Theater Foundation 2 – Contract C2013-70
  - Egyptian Theater Foundation 3 – Contract C2013-71
  - Imagine Ballet 1 – Contract C2013-72
  - Imagine Ballet 2 – Contract C2013-73
  - Ogden Dinosaur Park 1 – Contract C2013-74
  - Ogden Dinosaur Park 2 – Contract C2013-75
  - Ogden Dinosaur Park 3 – Contract C2013-76
  - Ogden Friends of Acoustic Music 1 – Contract C2013-77
  - Ogden Friends of Acoustic Music 2 – Contract C2013-78
  - Ogden Nature Center – Contract C2013-79
  - Ogden Pioneer Heritage Foundation 1 – Contract C2013-80
  - Ogden Pioneer Heritage Foundation 2 – Contract C2013-81
  - Ogden Pioneer Heritage Foundation 3 – Contract C2013-82
  - Ogden School Foundation – Contract C2013-83
  - Ogden Symphony Ballet – Contract C2013-84
  - South Ogden City 1 – Contract C2013-85
  - Treehouse Museum 1 – Contract C2013-86
  - Treehouse Museum 2 – Contract C2013-87
  - Treehouse Museum 3 – Contract C2013-88
  - Treehouse Museum 4 – Contract C2013-89
  - Union Station Foundation 1 – Contract C2013-90
  - Union Station Foundation 2 – Contract C2013-91
  - Union Station Foundation 3 – Contract C2013-92
  - Weber Arts Council 1 – Contract C2013-93
  - Weber Arts Council 2 – Contract C2013-94
  - Weber State University Foundation 1 – Contract C2013-95
  - Weber State University Foundation 2 – Contract C2013-96
  - Weber State University Foundation 3 – Contract C2013-97
  - Weber State University Foundation 4 – Contract C2013-98
  - Weber State University Foundation 5 – Contract C2013-99
  - Weber State University Foundation 6 – Contract C2013-100
  - Weber State University Foundation 7 – Contract C2013-101

Weber State University Foundation 8 – Contract C2013-102  
 Junior League of Ogden – Contract C2013-103  
 Eden Park Service District – Contract C2013-104  
 Golden Spike Event Center – Contract C2013-105  
 Hooper City 1 – Contract C2013-106  
 Hooper City 2 – Contract C2013-107  
 North Ogden City – Contract C2013-108  
 Ogden City 1 – Contract C2013-109  
 Ogden City 2 – Contract C2013-110  
 Ogden City 3 – Contract C2013-111  
 Ogden City 4 – Contract C2013-112  
 Ogden City 5 – Contract C2013-113  
 Ogden City 6 – Contract C2013-114  
 Ogden City 7 – Contract C2013-115  
 Ogden City 8 – Contract C2013-116  
 Ogden Pioneer Heritage Foundation 4 – Contract C2013-117  
 Ogden Weber Community Action Partnership – Contract C2013-118  
 Plain City 1 – Contract C2013-119  
 Plain City 2 – Contract C2013-120  
 Pleasant View City – Contract C2013-121  
 South Ogden City 2 – Contract C2013-122  
 South Ogden City 3 – Contract C2013-123  
 Washington Terrace City 1 – Contract C2013-124  
 Washington Terrace City 2 – Contract C2013-125  
 Weber County Parks & Recreation 1 – Contract C2013-126  
 Weber County Parks & Recreation 2 – Contract C2013-127  
 Weber Pathways – Contract C2013-128  
 West Haven City – Contract C2013-129

Commissioner Zogmaister moved to approve the consent items as listed; Commissioner Bell seconded, all voting aye.

#### E. ACTION ITEMS:

##### 1. RESOLUTION OF THE BOARD OF WEBER COUNTY COMMISSIONERS APPOINTING MEMBERS TO THE LITTLE MOUNTAIN SERVICE AREA BOARD - RESOLUTION 8-2013

Brooke Stewart, of the Commission Office, stated that there were five vacancies on this Board—two were due to resignations. Six applications were received. The vacancies were published according to statute. Commissioner Bell moved to adopt Resolution 8-2013 making the following appointments to the Little Mountain Service Area Board: Kerry W. Gibson, Randall Runolfson and Sterling Roberts to 4-year terms beginning 1/1/2013 through 12/31/2016, and Douglas Larsen and Chris Andersen with terms ending 12/31/2014; Commissioner Zogmaister seconded.

Roll call vote:

Commissioner Bell ..... aye  
 Commissioner Zogmaister ..... aye  
 Chair Gibson ..... aye

##### 2. CONTRACT WITH THE STATE OF UTAH DEPARTMENT OF TRANSPORTATION (UDOT) AND PROJECT ENGINEERING CONSULTANTS (PEC) FOR CONSTRUCTION ENGINEERING MANAGEMENT WORK RELATED TO THE OLD SNOW BASIN ROAD – CONTRACT C2013-130

Michael Tuttle, of County Engineering, briefly presented this contract. Commissioner Bell moved to approve Contract C2013-130 with the State of Utah Department of Transportation and Project Engineering Consultants for construction engineering management work related to the Old Snow Basin Road; Commissioner Zogmaister seconded, all voting aye.

**F. PUBLIC HEARINGS:**

1. Commissioner Zogmaister moved to adjourn the public meeting and convene the public hearings; Commissioner Bell seconded, all voting aye.
2. **PUBLIC HEARING ON AN ADMINISTRATIVE APPLICATION, CONDITIONAL USE PERMIT (CUP) 2013-03, SUMMIT AT POWDER MOUNTAIN PHASE 1 (SUMMIT)—154 UNIT PLANNED RESIDENTIAL UNIT DEVELOPMENT (P.R.U.D.)**

Sean Wilkinson, of the County Planning Division, stated that on 11/19/2012 the County Commission approved a Zoning Development Agreement and Rezone Ordinance with Western America Holding, LLC, for approximately 4,297 acres at Powder Mountain, which outlined development requirements and provided an overall density entitlement of 2,800 units. He read an excerpt from the Zoning Ordinance, Chapter 22, regarding P.R.U.D.s, noting that this item deals with concepts and designs that are not typical of the FV-3 Zone, where the majority of this project is located. The project contains 594 acres, of which 463 can be used for development (due to geological issues). Of the 463 acres, 384 are left as open space. The site plan shows 116 lots with 154 total residential units (in Phase 1), and the only commercial aspect is a conference center proposed on lot 76. P.R.U.D.s act as preliminary subdivision approval but final plats are required to go back to the Ogden Valley Planning Commission (OVPC) and County Commission for approval.

The first development phase includes a Road Dedication plat for the existing dirt road from the main parking area to the end of this development, a CUP application for a 400,000-gallon water tank, culinary water well and water pump house, approved by the OVPC on 2/26/2013. There is also an Access Exception application for 8 lots that will have access at a location other than across the front lot line. On 2/26/2013 the OVPC voted to table this item to provide time for the applicant to bring additional information, which was brought back on 3/19/2013, and the OVPC recommended approval of the application subject to several conditions. Each of the items that are a part of this P.R.U.D. is addressed individually in the staff report, and Mr. Wilkinson highlighted the main points.

Lots vary from 30-acres to 500-1,000 sq. ft. and the architecture is termed "modern mountain design" by the developers. Mr. Wilkinson said that the County Commission needs to consider whether the architectural design fits with this site and with existing development. Typically, P.R.U.D. architectural renderings show the site and location of what is actually to be built on a building footprint, however, the developers provided building envelopes with setbacks and basic conceptual designs only (in order to leave flexibility for future home owners). The County Commission must determine if sufficient information was provided to show what the overall design and character of the project will be and if it fits with the purpose and intent of the P.R.U.D. Initially, the OVPC had questions about the architecture but with the additional information provided, they recommended approval of the architectural design, and planning staff feels there is sufficient detail for the County Commission to consider. Planning staff is requesting that the Summit Eden Design Review Board provide a certification letter stating that the homes coming in for building permits meet their requirements, and the developers have agreed.

There are several roads proposed. The main road coming into the development is labeled Road "A" on the site plan, which is a public road along with Road "E." The remaining are private roads. There are some alternative paving materials in small portions of these roads and design variations on the public roads that will require variances from the County Commission when this comes back for final subdivision approval (i.e., Road "E," is a 36 ft. right-of-way and the 22 ft. pavement width portion of Road "A"). The County Commission needs to determine whether to accept those roads as public roads. Maintenance of those roads was a concern for the OVPC because they can only be reached by Powder Mountain Road, which is currently a State road, and they recommended that the County Commission work with the developers on a maintenance agreement where the developers provide maintenance of those public roads. This can be discussed as part of the subdivision application process.

There is a secondary access road in Cache County that the developers have agreed to provide connecting Powder Mountain to Highway 39 via the existing county road through Evergreen, Sunridge and Vista. It will not be improved at this point but can be developed in the future. The proposed location may change and can be finalized as the project continues.

Access exceptions are on Lots 1, 2, 3, 4, 9, 10, 19, and 42, the majority of which have very steep slopes where access would be dangerous. Private rights-of-way will be provided and there are a few design elements that still need correcting. The County Planning and Engineering Division agree that these exceptions make sense and should be approved subject to meeting the required design standards. There are also several restricted lots that will require hillside review.

The parking exception being requested is for a one parking space/nest unit (Lots 35, 76, 116), which are for 200-400 sq. ft. dwellings and have no road access. The developers are requesting a garage or parking off of the street in a small designated parking area. The OVPC recommended that one parking space be required per nest unit.

The developers are providing an extensive network of new trails, enhancing some existing trails and access roads. After meeting with the Planning Division and Weber Pathways, the developers have committed to provide access/connections to existing trails on the Weber Pathways Ogden Valley Master Plan. The developers have stated that future applications in the DRR-1 Zone will include a trails plan for the entire Powder Mountain development (which has to come in before development reaches 250 units).

The developers show a landscaping plan in the village and nest areas with 350 additional trees. The OVPC recommended approval.

The developers have stated that there will be no signage (i.e., for advertising) and no lights as part of this P.R.U.D. submittal. The residential homes are not affected by the Ogden Valley lighting ordinance but street lights fall under the ordinance.

The commissioners' packet included a summary of the financial components of the development. The P.R.U.D.'s proponents' demonstrated ability to financially carryout the proposed project.

The county currently has feasibility letters for water and waste water from the Powder Mountain Water and Sewer Improvement District for 141 units rather than the current 154 and a request has been made for updated letters from the District. County Engineering is still waiting response to the request for a capacity assessment letter from a qualified engineer stating that the sewer system has adequate capacity for the 154 units. The Development Agreement approved on 11/2012 states that no development shall be allowed unless the developer demonstrates the ability to provide water, sewer and other necessary infrastructure in accordance with State and county regulations.

The developers have provided a parcel for the Weber County Sheriff's Office and Weber Fire District south of where the current development ends. It is not in this phase but the Sheriff Office can request at any time that the facility be constructed.

The county is currently working with Cache County on an Interlocal agreement (for several of the nest units and a couple of the lots located in Cache) to designate Weber County as the land use authority.

Mr. Wilkinson addressed Commissioner Bell's questions stating that there have been several meetings regarding trails and the commitment that the county has received is that the developers will leave open to the public the existing trails shown in the Ogden Valley Pathways Master Plan (which will be updated as part of the rezone to the DRR-1 Zone).

Mr. Wilkinson said that the County Commission should consider reasonably anticipated detrimental effects of this proposed CUP and if there are any, whether they have been substantially mitigated, and whether the proposed use complies with the Zoning Ordinance requirements and those of the applicable review agencies. He read statements that also need to be considered from Chapter 22 relating to the architectural design of the buildings, public/private streets, landscaping, signage, lighting etc.

The OVPC voted to approve the development on 3/39/13 subject to these conditions/requirements:

- The architectural design of the proposed housing units is acceptable and complies with the P.R.U.D. criteria.
- Accessory buildings are not proposed for any of the single-family dwelling units.
- The landscape plans for the village & nest areas comply with applicable ordinance requirements.
- The units in Cache County are approved subject to an Interlocal Agreement with Weber County as the land use authority, to oversee planning approvals and building inspections.
- The Trails master plan is acceptable subject to the developers providing access & connections to existing trails on the Weber Pathways Ogden Valley Master Plan.
- The road pattern and public/private designations are adequate; however, a road maintenance agreement between the developers and Weber County is required.
- Alternative road design elements will require variance to the county's Subdivision Ordinance from the Weber County Commission.
- A secondary access road in Cache County is required.
- The Access Exception application is approved subject to meeting design requirements.
- The restricted lots meet applicable standards.
- The Zoning Development Agreement has been complied with, but real estate transfer fee must remain at 1.5%.
- Delinquent property taxes within the P.R.U.D. must be paid prior to final subdivision approval from County Commission.
- Certification is required from the Summit Eden Design Review Board that each house plan submitted for a building permit complies with their design guidelines and the P.R.U.D. approval.
- The site plan with 116 lots and 154 units is approved.
- P.R.U.D. variations to the FV-3 zoning for lot size, setback, and building heights are approved.
- Time share/nightly rental units shall be designated on site plan.
- The conference center on Lot 76 is approved as non-residential accessory use.
- Parking space adjustment from 2 spaces to 1 space is allowed for the nest units.
- The conditions of approval in staff report must be complied with.

Mr. Wilkinson said that staff recommends approval of the P.R.U.D. and outlined the Commission's three options: grant approval subject to the conditions in the Planning Division's and OVPC recommendations; adopt the above findings and recommendations from the OVPC; or include additional findings/conditions. If more information is needed they can table and request specific information from the developers, or if they determine that the P.R.U.D. does not comply, they can deny the application.

Russ Watts, representing Summit, addressed the commissioners' questions. Summit has not yet determined the conference center size but it is for small business conferences. There are five nest cabin sites that are part of the conference center. Mr. Watts said that they met twice with Weber Pathways and the County Planning Division on the major trail system, and he reiterated that all trails are for public use. The trails in the village will be part of the trail system and the public is expected to check in and be respectful of the rules (i.e., to stay on the trail). The Summit Eden Design Review Committee is comprised of 6 consultant members that work for the developers to ensure compliance for the plans that go to the county. Summit met with the Weber Fire District and the county and designated the lot size for their facility, which will be dedicated to the Fire District as part of Phase 1, but it may come in later. The Sheriff's Office will be part of that complex. The facility will be paid for by the developers. They do not have the feasibility letters from the Powder Mountain Water & Sewer District because the District does not meet until tomorrow.

Mr. Watts said that the park is private. There is much open space and the trail system goes through the entire 10,000 acres. He said that the 1.5% real estate transfer fee will be used to enhance community elements—trails and the mountain for those hiking, skiing, using, etc. The transfer fee must be used strictly within the development area. He said that half of those buying homes do not have cars and will use Summit's transportation system to/from the airport. As part of the DRR-1, they will be proposing a trail head and/or parking pick-up areas to encourage people to park and buy discount tickets for Summit's transit facilities to go up/down the mountain rather than driving themselves. Employment housing will be designated in the future. With this P.R.U.D. proposal, Summit is not changing any uses off of the mountain and down the Valley floor.

Kelly Hipwell, with County Roads, expressed concerns for snow removal with the narrow road width request (from 26 ft. to 22 ft.). Mr. Watts stated that it is for one 900-1,000 ft. section of road where the conference center is located, and they want to lessen the impact of cutting/scarring into the mountainside and not take out trees. They have basic areas designated for snow storage along that road. The developers need to work with the county because they will be doing some snow removal themselves.

Chair Gibson invited public comments and following is a summary.

Shanna Francis, of Eden, noted that currently there are no residential lighting requirements for Ogden Valley, which she hopes the Commission adopts. Because of the development's location on top of Powder Mountain there may be possible affects on the night sky and she asked that there be some lighting requirements—shielding all lights, that they point downward, etc., similar to the commercial regulations. In the past, developers working on proposed development on top of Powder Mountain worked with the State/Department of Environmental Quality for critical watershed protection mitigation efforts and she hopes these developers are requested to work with the State because it affects everyone down below. She said that Snow Basin was required to do similar things. She expressed concerns with the added development and the strain on the Weber County Sheriff's Office because they decreased the number of officers for the Ogden Valley but the area covered has increased. She asked if the county has done a cost analysis for its road maintenance that will be added on top of the mountain and how that will affect road maintenance budgets. Mr. Watts said that lighting is a major issue and they have it all covered within their own guidelines and they support the night sky, particularly because they are on top of the mountain. The agreement does not address lighting.

Lee Schussman, of Eden, expressed concerns with the proposed site for a major transportation hub at the Wolf Barn area (zoned AV-3 and open space), which can have significant negative environmental community impacts and would call for changing the current zoning to commercial. He suggests the hub in an existing commercial area in Eden, where the public could access public transportation to all of Ogden Valley (i.e., North Fork Park, Huntsville, other ski areas). If located at the Wolf Barn area—one of the few open riparian areas in the Eden area that still has a plethora of wildlife, etc., the hub would only serve Powder Mountain and would suffer a huge environmental impact with 600-700 hundred people daily during the winter to use the transportation hub, in addition to the required bathrooms and other facilities to take families out of storms, serve food, etc. He stated that all Weber County citizens now have a stake on this endeavor because of the \$22 million bond to underwrite Summit's ability to borrow at good rates to build the infrastructure.

Steve Clarke, of Eden, said that in an earlier meeting Greg Mauro, of Summit, described his interest in having the P.R.U.D. be officially designated as a dark sky development by the IDA (International Dark-Sky Association). He applauds that desire and suggested that a condition of the P.R.U.D. approval be that public and residential lighting meet the IDA dark sky standards with sensitivity to limiting the light intrusion on Ogden Valley residents. He concurs with Mr. Schussman's analysis of the transportation issue. Mr. Clarke believes that Summit is working with the county on a tax increment funding and redevelopment agreement. Because this is unfamiliar to most Ogden Valley residents, he requested an explanation of the process, why it is being talked about, etc.

3. **PUBLIC HEARING TO VACATE 6300 EAST, LOCATED BETWEEN HIGHWAY 39 AND PINEVIEW RESERVOIR**

(See related item F.4. below.) Ben Hatfield, of the County Planning Division, showed an area map. The developer for the Edgewater Beach Resort P.R.U.D. (P.R.U.D.), adjacent landowner to 6300 East, is requesting to vacate any public right on that dirt road. The P.R.U.D. received a major redesign in 2012 by the County Commission with secondary access onto 6300 East. The applicant notified the county that UDOT wishes to limit the number and distance between access points along Highway 39 and is requesting that the P.R.U.D. only use their one access point for the development. The Ogden Valley Planning Commission (OVPC) heard the item on 3/26/2013 and recommended approval subject to the additional amount of property on the dirt road being deeded to the adjacent land owner, Marion Fowers Martin, for the private access (about 12 ft.). Mr. Hatfield said that Ms. Martin's home is served by the dirt road and her property is in a Conservation Easement. No development can occur at the end of the road due to Pineview Reservoir and the easement, and staff is recommending approval of the vacation of 6300 East. Mr. Hatfield had discussed this item previously with the County Engineer, Recorder/Surveyor and Kelly Hipwell, from County Roads.

John Reeve, engineer for developer, said that this is the third time this item has come before the Commission; the first time it had 168 units and now has 57 and includes a couple of commercial units. To address UDOT's concerns about the two road accesses being so close together and that the P.R.U.D. might use the secondary access on 6300 East for more than secondary access, the developer approached Ted Black of the Weber Fire District to discuss alternatives. Mr. Black had said that if they put sprinklers in all the buildings they would be allowed to have one access. The developer desired to vacate 6300 East (a remnant of a road that went across Ogden Valley before the Reservoir was built), which had become a private driveway, and to keep it intact. Instead of vacating the road so that the other owner only received half of it, they prepared a deed giving their 12 ft. to Ms. Martin so she could have a full gravel road.

Both parties said that they had tried to contact the other to discuss the issues to no avail. Today they both expressed a desire to work together to resolve the issues. A few who spoke asked that this be tabled to resolve the issues regarding the property line.

Adjoining property owner, Marion Fowers Martin, showed pictures of her farm. Her grandfather homesteaded the property in 1892 and her family has owned it since. Ms. Martin put the farm into a Conservation Easement in 2003 so that it will remain the beautiful scenic land that it is. It will remain agricultural in perpetuity. She has received many comments about the beauty of that farm and how it enhances the entrance to the Ogden Valley. She said that there is a long history of proposed site plans for the P.R.U.D. In 2004 there were a number of hearings by the OVPC and County Commission and there was a big concern because the property to the east of the P.R.U.D. (Ski Lake Village) had built a row of very tall buildings that people in the meetings referred to as a wall of buildings. There was a lot of discussion about the Ogden Valley General Plan (OVGP) and zoning regulations (to preserve the view corridors, rural/agricultural atmosphere of Ogden Valley), and the idea then was to try to make a nice transition from this open scenic farmland to the development. The proposed P.R.U.D. is impacted by the view corridors all around the Reservoir and along Highway 39, which the past commissioners were considering as the designated scenic entry into Ogden Valley.

Ms. Martin said that in an effort to preserve the view corridors between the Highway and the Reservoir, decisions by both the Planning and County Commissions in 2004 established that there would only be two buildings on the west side of her property, with a maximum height of 25 ft., and a setback of 50 ft. from the property line for a buffer zone where there could be landscaping to soften the transition between the farm and development. The developers came back numerous times since 2004, and until March 2012 the commissioners always affirmed the plan that allowed for only two buildings and 50 ft. setback. Ms. Martin said she did not receive adequate notice for the 3/2012 Planning Commission meeting and was not able to attend, and a major revision of the site plan was made—the Commission allowed the addition of 3 buildings, access from 6300 East, and the reduction of the setback to 35 ft. She opposes those changes.

Ms. Martin said that to vacate 6300 East is complicated because of recent surveying that indicates the section line of the property is not the center line of the road, that it is offset to the east and she requested clarification. The property line had always been assumed to be the center line of the road, and if it changes to the section line it moves the whole property line over to the east. It raises questions about the overall site plan and the affect of putting three buildings in that area where only one was planned. She showed various pictures of the farm, of 6300 East and the P.R.U.D. In the original 2004 plan, which was reaffirmed for about 8 years through many hearings, there was only going to be one other building in Phase 3 and the building was to be setback 50 ft. from the property line, which at that time was 6300 East. Now, the developer has proposed changes that include a duplex along the west side and added a garage.

If the road is vacated, Ms. Martin asked if there would be a turn lane-type arrangement in the highway to get into the P.R.U.D., and if so how it would impact access to/from the farm from the highway with their tractors and large trucks hauling bales of hay, etc. The impact of the change of the property line and the setbacks needs to be reviewed. She suggests that this proposed vacation be combined with another review of the site plan and that the County Commission revert to the site plan originally approved in 2004 because it followed the guidelines of the General Plan and zoning regulations. She said that it is incumbent upon this Commission to make decisions that will preserve this as a scenic entry and the beauty of the Ogden Valley for future generations. She addressed Commissioner Bell's question stating that according to the legal description, the property line is on the section line. In the Conservation Easement the property description has the section line as the border of her property. It probably has been assumed inaccurately that the property line was the center line of the road. The dirt road is designated as a county road and has signage and the county has been responsible for its maintenance. She stated that this has been a public road and the public continues to use it for fishing and beach access. Mr. Hipwell said that at the end of 6300 East there is sufficient space for a snow plow to turn around and for possibly a couple of cars to park.

Commissioner Zogmaister stated that there are many unknowns regarding impacts of this road vacation. Ernest Rowley, County Recorder/Surveyor, said that there was a dependent re-survey conducted by the Bureau of Land Management in the early 1970's. There is a monument south of Highway 39 and another monument on Cemetery Point that are being used as a control for that property line. To the best of his knowledge they are the most accurate retracements of the original federal survey done in the 1800's for that property. As part of the work for a land exchange for the villages, the County Surveyor's Office had a contract with the U.S. Forest Service to work on their boundary, and they also identified the boundary line between the P.R.U.D. property and the federal property and the section line was identified. The section line runs approximately from the middle of the east half of the gravel that is there. He said that the road has been public since about 1885—it was the main road out of Huntsville before the Reservoir was built. It ran down Cemetery Point, went across the Reservoir and across to where that road currently is and on into the Snow Basin area. Some of the road is on the P.R.U.D. property and some is on Ms. Martin's property. Mr. Rowley said that in an order given by the Weber County Court in 1885, Book C, starting at page 245, that road was designated as 66 ft. wide, thus the current description that says 50-ft wide would not be vacating the entire width of road. It is shown as a 50-ft. wide road on Edgewater's Phase 1 and there was intent to narrow it to 50 ft. as part of that development, however, Mr. Rowley was not able to find in the public record that it ever occurred.

Mr. Reeve said that the developer thought that the property owner on the west side would be happy to get rid of the public road and have a private road but apparently that is not so. The P.R.U.D.'s road is being used and 6300 East is being used by those living on Ms. Martin's property.

Chair Gibson invited public comments and following is a summary.

Douglas Taggart, representing Ms. Martin stated that she is not necessarily objecting to the road vacation, but that there has been no dialogue between the property owners on either side of road. Ms. Martin had been told that the section line for the property, which on the deed divides the two properties, is on the

developer's property. There are impacts to the road vacation. The Ogden Valley Land Trust owns the Conservation Easement and this affects the setbacks. If everything moves east, it minimizes the setback and they want to work through this with the developers. Additionally, if the county is going to vacate the road, Ms. Martin would like it put into a good condition first.

Leslie Rinaldi, counsel for Celtic Bank, said that they are happy to work with Ms. Martin on the road vacation and to deed their portion over to her. Her boss, Mr. Howell, was on that road and was scolded to get off of it, thus it has been a quasi public road. Ms. Rinaldi requested that the vacation not be tabled as Celtic Bank has been working hard to resolve this for over a year.

Jody Smith, Ogden Valley Land Trust Chair, spoke in support of Ms. Martin's decision. She appreciates Ms. Martin being present because she was in California, lives in Montana, and had come to Utah for this meeting. She said that the farm is 110 years old, 123 of stunningly beautiful acres and this easement is a selfless gift. She read an excerpt from the Easement that states the property is bordered by the north of Pineview and bisected by State Road 39, which has been designated a scenic highway by the State, which said property provides critical winter and summer habitat for big game species and high quality habitat for a variety of other wildlife, serves as a corridor for wildlife to and from the Reservoir, it is one of the last remaining historical farms in the south end of Ogden Valley, while simultaneously acting as an undeveloped buffer zone providing watershed protection along a substantial portion of the south shoreline of Pineview. As an Eden resident, she adamantly opposes the setback being changed from 50 to 35 ft. so that dense building can occur; their view corridors and scenic by-ways should not be influenced by development. She said that at one time there was a promise by the County Commissioners and the developers for a buffer zone but this did not occur and she would like the Commission to reconsider it.

Ray Bertoldi, P.R.U.D. project architect, stated that they looked at impacts in terms of density and have 1/3 of what was previously approved, which included fairly large buildings. They have been sensitive with the transition of open space, so as to not have a wall of buildings. There is a maximum height of 23 ft. for a 1/2 to 2/3 footprint of a building and the remainder height is about 10 ft., these are two story buildings at most, have low sloped roofs, etc.

Shanna Francis, of Eden, with the Ogden Valley Land Trust, said the Trust had been told that there is a section marker near the Highway that is approximately 6 ft. from the edge of the road. She noted that there is enough confusion about where the property/section line actually exists, up to possibly 9 ft., and asked that this be tabled because the Trust needs to have setback and other issues verified.

Jon Bingham, with the Ogden Valley Land Trust, said that if the road were to be developed as proposed in the development it would be in direct conflict with the Conservation Easement because it would impact the area recorded on the Easement. The location of the county road seems to be in dispute. He said that the section line goes down the eastern side of the lane, as far as 9 ft. off of the center line of the road, and it is important to resolve the issues first. Apparently the site plan approved for the P.R.U.D. used a description of the road right-of-way using the center of the dirt road that goes down to the farm. That center line for the road was used as the point to measure for the setbacks for the P.R.U.D., not the property line. If the vacation is approved and additional property is deeded to Ms. Martin, it reduces the setback even more and this would be a major change to the approved setback on the development plan.

Mr. Reeve said that Ms. Martin's property line is the section line that was established and reestablished and was used for the P.R.U.D.'s boundary. The gravel road does not parallel with the section line, varies from 3-6 ft., runs at a different angle than the section line and puts the road more on Ms. Martin's property than on the P.R.U.D.'s. He said that the section line has always been the property line. He said that he had a copy of the survey done by Great Basin Engineering in 2004 and that he agrees with their section line. He said there is no question where the property line is and suggests vacating from the center line of the gravel road and they will give Ms. Martin 12 ft., which means the P.R.U.D. loses ground.

Commissioner Zogmaister asked Mr. Hatfield what property description he used for the proposal to vacate and he had sent the document to Mr. Rowley who had responded that he would only review it if directed by the Commission. Mr. Rowley said that the section line is well monumented and documented. He said that the section line being used as the property line between these two parties is not where the center line of the current gravel road is. He did not know whether the current gravel road is the center line of the county's easement, however, the county easement is 66 ft. wide according to a county court from 1885. Commissioner Zogmaister noted that if the vacation were to go forward it is to vacate 66 ft. and Mr. Rowley said that is correct. The description that his office reviewed on the conveyance that Edgewater would be making to Ms. Martin for the gravel road goes up the section line, west about 3 ft. and starts another bearing down the center of the gravel road and when it comes back to the section line it has about a 6 ft. difference, crosses the section line onto the P.R.U.D.'s property to the eastern edge of the gravel, runs along the eastern edge of the gravel back to the State Highway and closes to the section line.

**4. PUBLIC HEARING FOR CONSIDERATION ON AN ADMINISTRATIVE APPLICATION, CONDITIONAL USE PERMIT (CUP) 2013-8 (EDGEWATER BEACH RESORT P.R.U.D.), REQUESTING TO AMEND THE SITE PLAN BY REMOVING SECONDARY ACCESS DUE TO THE VACATION OF 6300 EAST**

(See related item F.3. above.) Ben Hatfield, of the County Planning Division, showed area maps. The applicant is requesting an amendment to the existing site plan, approved in 2012, for this P.R.U.D. If the road vacation of 6300 East is approved, the applicant wishes to terminate two interior private road stubs (in Phase 3). Staff recommends approval of the amended site plan, subject to the road vacation approval. If the vacation is not approved, staff recommends a secondary access there.

Chair Gibson invited public comments and following is a summary.

John Reeve, engineer for developer, stated that the reason to amend the site plan was subject to the vacation of 6300 East. If it is not approved, the developer will go with the original approval and have secondary/emergency access from 6300 East and will not put sprinklers on the buildings.

Douglas Taggart, representing Marion Fowers Martin, reiterated that Ms. Martin is not necessarily objecting the proposed road vacation but wants dialogue between the property owners to resolve the issues. Ms. Martin would like the setbacks to be considered, taking into account the confusion of the section line, wants confirmation of the building heights and the number of buildings. Minutes of the Planning and County Commissions refer to an appropriate landscaping buffer zone.

Leslie Rinaldi, with Celtic Bank, stated that there have been numerous meetings and would like action today because every delay costs her client, Celtic Bank, money. They have put a considerable amount of engineering and effort into the project and have been sensitive to the issue.

Ms. Martin understands the concern with a delay. She has been coming back to the OVPC meetings and writing them and the County Commission since 2004 but the developer is repeatedly making revisions. She would like to go back to the 2004 plan, which was considered repeatedly between 2004 and 2012. The vacation of 6300 East is tied to the current site plan.

John Bingham, with the Ogden Valley Land Trust, referred to the comment by the developer's attorney on the cost of tabling this item stating that by vacating the road it saves the developer many thousands of dollars on a road the developer he would not have to develop and on the extra entrance into his property. He is concerned that the developer's revised site plan still shows that there is a 35-ft. setback from the property line of the deeded property to Ms. Martin. The Planning Commission recommended the additional 10-12 ft. be deeded to Ms. Martin to ensure that the lane remains on her property but on the site plan the developer shows that the new property line is that additional 10-12 ft. to the east of the current property line. He asked how they can keep the buildings on the exact same spot, stating that it is 35 ft. setback, when it has already reduced by 10-12 ft. These issues need to be resolved before this proposal is approved.

Ray Bertoldi, P.R.U.D. project architect, stated that previously two buildings were approved adjacent to the Martin property. Those were large multi-family units, they may have had a 25-ft. height restriction, but ranged from 4-8 plex-type buildings, which means there was nothing between those buildings, so the massing of those is quite different than the buildings on the current site plan and there is less impact to the view corridors, etc. He presented this project about three times to the Planning Commission and each time there was a lot of discussion and information provided. All of this information has been available on Miradi on the county's website for a long time.

5. Commissioner Bell moved to adjourn the public hearings and reconvene the public meeting; Commissioner Zogmaister seconded, all voting aye.

6. ACTION ON PUBLIC HEARINGS:

**F.2.-CONDITIONAL USE PERMIT (CUP) 2013-03 (SUMMIT AT POWDER MOUNTAIN PHASE 1) CONSISTING OF 154 UNIT PLANNED UNIT DEVELOPMENT (PRUD)**

Commissioner Zogmaister said that a request was made that the dark sky designation by IDA be a condition of approval and asked if Summit was interested in doing that. Mr. Watts said that it is already part of their design guidelines and that the Commission can make it a condition of approval. It is not included in phase 1 because there are no street lights but will be included in a future phase.

Commissioner Bell moved to accept the staff report on Conditional Use Permit 2013-03 consisting of 154 units at the Summit at Powder Mountain Phase 1 Planned Unit Development. Commissioner Zogmaister seconded. She said that it has been a long process. The Commission has given a lot of time to the Development Agreement and P.R.U.D. She appreciates the due diligence by the OVPC. There are still some unanswered issues that will be required to be answered and information provided. All voted aye.

**F.3.-REQUEST TO VACATE 6300 EAST, LOCATED BETWEEN HIGHWAY 39 AND PINEVIEW RESERVOIR**

Commissioner Zogmaister moved to table this item to vacate 6300 East for the two parties to have an opportunity to discuss it before vacation is considered and to ensure that the legal description is correct. Chair Gibson seconded for discussion. Commissioner Bell said that he struggled with the issue but felt that it should move forward because of the time that has been spent on it. Commissioner Zogmaister stated that a vacation of a road is fairly final and should be done correctly where both parties fully understand the impact of the vacation. Chair Gibson noted that it has been challenge for him as well and agrees with giving some time to resolve the issues but does not want it to drag on. All voted aye.

**F.4.- REQUEST ON CONDITIONAL USE PERMIT (CUP) 2013-8 (EDGEWATER BEACH RESORT PRUD),**

**TO AMEND THE SITE PLAN REMOVING SECONDARY ACCESS DUE TO THE VACATION OF 6300 EAST**  
Commissioner Zogmaister moved to table this item, Conditional Use Permit (CUP) 2013-8 (Edgewater Beach Resort PRUD), to amend the site plan removing secondary access due to the vacation of 6300 East, because it is dependent on the above item; Commissioner Bell, all voting aye.

**G. ASSIGN PLEDGE OF ALLEGIANCE & THOUGHT OF THE DAY FOR TUESDAY, APRIL 16, 2013, 10 A.M.**

**H. PUBLIC COMMENTS:** None

**I. ADJOURN**

Commissioner Bell moved to adjourn at 12:36 p.m.; Commissioner Zogmaister seconded, all voting aye.

Attest:

Kerry W. Gibson, Chair  
Weber County Commission

Ricky D. Hatch, CPA  
Weber County Clerk/Auditor

# **EXHIBIT**

## **G**

**MINUTES  
OF THE BOARD OF COMMISSIONERS OF WEBER COUNTY**

Tuesday, May 21, 2013 - 10:00 a.m.  
2380 Washington Blvd., Ogden, Utah

*In accordance with the requirements of Utah Code Annotated Section 52-4-7(1)(d), the County Clerk records in the minutes the names of all citizens who appear and speak at a County Commission meeting and the substance "in brief" of their comments. Such statements may include opinion or purported facts. The County does not verify the accuracy or truth of any statement but includes it as part of the record pursuant to State law.*

**COMMISSIONERS PRESENT:** Kerry W. Gibson, Chair, Jan M. Zogmaister and Matthew G Bell.

**OTHERS PRESENT:** Ricky D. Hatch, County Clerk/Auditor; David C. Wilson, Deputy County Attorney; and Fátima Ferneliús, of the Clerk/Auditor's Office, who took minutes.

**A. WELCOME** – Chair Gibson

**B. PLEDGE OF ALLEGIANCE** – Paige Greenhalgh

**C. THOUGHT OF THE DAY** – Commissioner Bell

**D. CONSENT ITEMS:**

1. Purchase Orders for \$109,624.95
  2. Warrants #297825-#298012 for \$734,493.86
  3. Minutes for the meeting held on May 14, 2013
  4. Donate 13 bicycles to Child Abuse Utah from the Weber County Sheriff's Office
  5. Divert property that is now clear of any evidentiary or found property requirements to the Weber County Sheriff's Office for agency use
- Commissioner Zogmaister moved to approve the consent items; Commissioner Bell seconded, all voting aye.

**E. ACTION ITEMS:**

**1. RECOMMENDATIONS FROM THE RECREATION, ARTS, MUSEUMS AND PARKS (RAMP) COMMITTEE FOR THE 2013 RAMP EZ GRANTS**

Chris Ward, RAMP Administrator, presented the list of 2013 RAMP EZ grants (\$2,000 and under). Commissioner Bell moved to approve the 2013 RAMP EZ Grant recommendations, Commissioner Zogmaister seconded, all voting aye.

**2. ACTION ON PUBLIC HEARING HELD APRIL 9, 2013 REGARDING THE VACATION OF 6300 EAST STREET, LOCATED BETWEEN HIGHWAY 39 AND PINEVIEW RESERVOIR – ORDINANCE 2013-15**

Ben Hatfield, of the County Planning Division, noted that the public hearing was tabled for the two parties to have an opportunity to discuss the issues before vacation was considered and to ensure that the legal description was correct, which has now occurred. The applicant is again requesting this vacation. The Planning Commission recommended vacation of any public right on 6300 East subject to the appropriate amount of land being deeded to the adjacent land owner for the private driveway. The new legal description has been prepared.

John Reeve, consultant for the owner of the Edge Water property, said that their surveyors and the surveyors for Marion Martin verified where the section line is, they had given Ms. Martin a description of where the center line is and are willing to give her a 12-foot strip of property from the center line of the gravel line to the east.

Doug Taggart, representing Marion Martin, stated that Ms. Martin does not object to the vacation of the road as noted by Mr. Reed with the deeding of the 12 ft. strip from the center of the road to the east, but they have not yet seen a proposed deed.

Commissioner Bell moved to adopt Ordinance 2013-15 vacating 6300 East between Highway 39 and Pineview Reservoir; Commissioner Zogmaister seconded.

Roll Call Vote.

Commissioner Bell .....aye  
Commissioner Zogmaister.....aye  
Chair Gibson .....aye

**3. ADMINISTRATIVE APPLICATION, CONDITIONAL USE PERMIT (CUP) 2013-08 (EDGEWATER BEACH RESORT PRUD), & REQUEST TO AMEND THE SITE PLAN REMOVING SECONDARY ACCESS DUE TO VACATION OF 6300 EAST**

Ben Hatfield, of the County Planning Division, noted that the last approved site plan had two access points connected to 6300 East. With the above item's vacation, the plans show a hammerhead turnaround and termination of a stub to 6300 East after the parking area and before the trail.

Commissioner Bell moved to approve the Conditional Use Permit (CUP) 2013-08 (Edgewater Beach Resort PRUD), and amending the site plan removing secondary access due to the vacation of 6300 East; Commissioner Zogmaister seconded, all voting aye.

**4. CONTRACT WITH GARY BARR FOR INDIGENT DEFENSE SERVICES – CONTRACT C2013-176**

David Wilson, Deputy County, stated Mr. Barr is moving to adult court.

Commissioner Zogmaister moved to approve Contract C2013-176 with Gary Barr to provide indigent defense services in Weber County; Commissioner Bell seconded, all voting aye.

**F. ASSIGN PLEDGE OF ALLEGIANCE & THOUGHT OF THE DAY FOR TUESDAY, MAY 28, 2013, 10 A.M.**

**G. PUBLIC COMMENTS:**

(See item E.2). Doug Taggart wanted to state Marion Martin's objections to the site plan, which have been previously expressed: that the setbacks (reduced from 50 ft. to 35 ft.) and the number of buildings on the west side of the property (from 1 to 3 buildings) are different than what was originally in the plan and what she has expected over the past nine years. She objects to that change. She very much supports maintaining the beauty of the Ogden Valley and feels the previous setbacks and limitation on the number of buildings provides a gradual transition in the scenic corridor and entrance to the Valley. She requests that if there are any further amendments to this site plan that she be given adequate notice. She lives out of state and received notice of this meeting late last Friday.

(See item E.2). John Bingham, with the Ogden Valley Land Trust, commends the vacation of the roadway because it will enhance and prevent encroachment of any development on the conservation easement on the Marion Martin property. In speaking with Ms. Martin, her concern with vacating the road is that she now is responsible for maintaining the gravel roadway. He asked that the County Road Department put the gravel driveway in good repair before it is turned over to her. Additionally, that adequate notice of related issues be given her because she lives out of state.

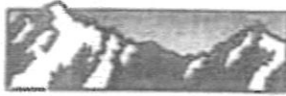
**H. ADJOURN**

Commissioner Zogmaister moved to adjourn at 10:27; Commissioner Bell seconded, all voting aye.

Attest:

\_\_\_\_\_  
Kerry W. Gibson, Chair  
Weber County Commission

\_\_\_\_\_  
Ricky D. Hatch, CPA  
Weber County Clerk/Auditor



## Staff Report to the Weber County Commission

Weber County Planning Division

### Synopsis

#### Application Information

**Application Request:** A request for a public hearing to vacate 6300 East, located between Highway 39 and Pineview Reservoir.  
**Agenda Date:** Tuesday, May 21, 2013  
**Applicant:** Reese Howell  
**File Number:** SV 01-13

#### Property Information

**Approximate Address:** 6300 East Highway 39  
**Project Area:** 0.75 acres  
**Zoning:** Commercial Valley Resort Recreation (CVR-1 Zone) and Shoreline (S-1 Zone)  
**Existing Land Use:** Residential  
**Proposed Land Use:** Residential  
**Parcel ID:** 20-012-0020  
**Township, Range, Section:** T6N, R1E, Section 13

#### Adjacent Land Use

<b>North:</b> Pineview	<b>South:</b> Hwy 39/Residential
<b>East:</b> Residential	<b>West:</b> Residential/Agricultural

#### Staff Information

**Report Presenter:** Ben Hatfield  
bhatfield@co.weber.ut.us  
801-399-8766  
**Report Reviewer:** JG

### Applicable Ordinances

- Zoning Ordinance chapter 9A Shoreline (S-1 Zone)
- Zoning Ordinance chapter 9C Commercial Valley Resort Recreational (CVR-1 Zone)

### Background

The applicant is requesting to vacate any public right on 6300 East, located between Highway 39 and Pineview Reservoir. The applicant is an adjacent land owner and is developing condominium project called the Edgewater Beach Resort PRUD. The access to the condominiums (Phase 1) was built in 2005 based on a variance previously granted by UDOT. UDOT would like to limit the number and distance between access points which serve multiple units, and is requiring that there be only one access point for the project to Highway 39. There are currently no improvements (acceleration and deceleration lanes) on Highway 39 for 6300 East.

The project received a major redesign in 2012 which was focused around their own access point to the highway. Since the property was adjacent to 6300 East a secondary access point was designed. With this design road improvements (acceleration and deceleration lanes) and a redesigned entry will be built on Highway 39 for the project.

One home is served by the existing dirt road (6300 East) with the remainder agricultural land being in a conservation easement. It is proposed that this access will remain as a private drive for the residence at the end of this road. Any property owned by the developer (approximately 12 feet) underlying the private drive will be conveyed to the adjacent land owner.

The County Commission tabled this request after holding a public hearing on April 9, 2013. After having the location of the property lines marked by a surveyor, and allowing time for the neighbor to address any concerns, the applicant is again requesting approval of this vacation request.

### **Planning Commission Recommendation**

On March 26, 2013 the Ogden Valley Planning Commission recommended approval of the vacation of 6300 East with the condition that:

"The appropriate amount of land (approximately 12 feet) is deeded to the adjacent land owner for the use of a private driveway for the existing home."

### **Conformance to the General Plan**

This vacation request will not have an impact on the General Plan. There is one home served by 6300 East with the rest of their property in a conservation easement.

### **Staff Recommendation**

Staff recommends approval of the request to vacate 6300 East, because there are no further development potential needs for the road.

### **Exhibits**

- A. Location Map
- B. Vacation Ordinance

Ordinance \_\_\_\_\_

**An ordinance of Weber County vacating a portion of 6300 East Street**

**Whereas**, 6300 East Street was first described and recognized as a public right-of-way on March 3, 1885 as recorded in Book "C" Pages 245 of the Weber County Clerks Records; and

**Whereas**, 6300 East Street no longer provides access to Huntsville Town, due to the location of Pineview Reservoir; and

**Whereas**, 6300 East Street consists of an unimproved 66 foot wide right-of-way; and

**Whereas**, 6300 East Street will no longer be maintained by Weber County; and

**Whereas**, vacating 6300 East Street will reduce maintenance costs; and

**Whereas**, The Ogden Valley Township Planning Commission, after appropriate notice, held a public hearing on March 26, 2013 unanimously recommended that the Weber County Board of Commissioners approve the vacation of 6300 East Street; and

**Whereas**, a public hearing was held by the Weber County Commission on May 21, 2013, after meeting appropriate notice requirements; and

**Whereas**, the vacation of 6300 East will not adversely affect the public health, safety, or welfare;

**Now Therefore**, the Weber County Board of Commissioners ordains and vacates the following:

**See Exhibit A**

Adopted and ordered published this \_\_\_\_ day of \_\_\_\_\_, 2013 by the Weber County Board of Commissioners,

Commissioner Bell	Voting _____
Commissioner Gibson	Voting _____
Commissioner Zogmaister	Voting _____

\_\_\_\_\_  
Kerry W. Gibson, Chair

ATTEST:

\_\_\_\_\_  
Ricky D. Hatch, CPA Weber County Clerk/Auditor

EXHIBIT A  
Description for vacating a public road.

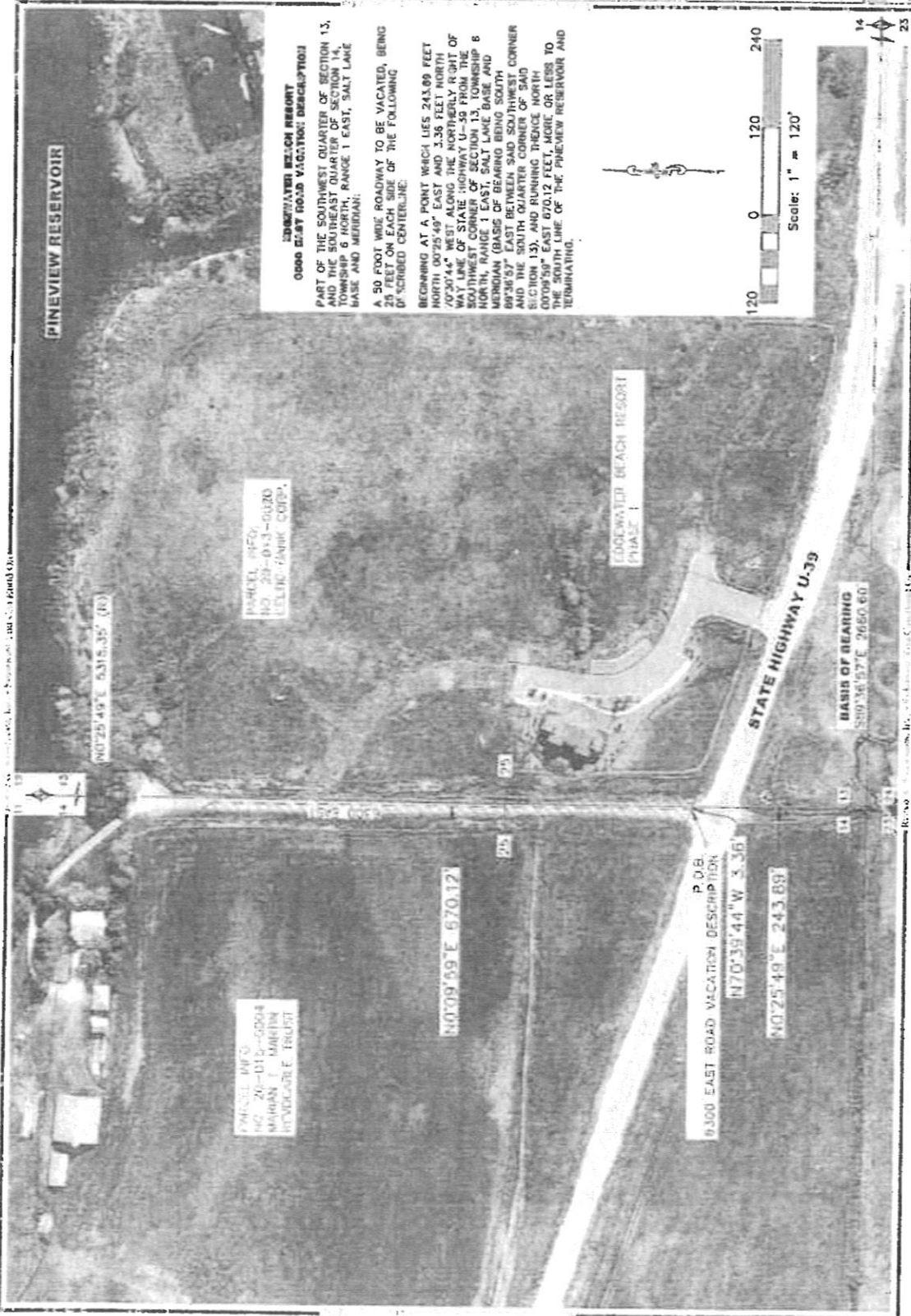
That part of a public road right-of-way located in Sections 13 and 14, Township 6 North, Range 1 East, Salt Lake Base and Meridian, which was surveyed and described by the Territorial County Surveyor and recognized by the Weber County Court in 1884 and 1885 and made of record in the Weber County Roads Book a copy of portions which are found in the Weber County Clerks Records in Book C beginning at page 245. The specific portion of this public road right-of-way being vacated is between the northerly right-of-way line of State Highway 39 and the property line of the United States of America as surveyed and monumented by the Weber County Surveyor and documented on record of survey number 3429 and as identified in deeds being recorded in book 548 page 586 and book 712 page 455 of the deed records of Weber County, Utah.

Also, a strip of land being shown and noted as Street Dedication along the west boundary line of the Edgewater Beach Resort Phase 1, a Condominium Plat, being part of the Southwest Quarter of Section 13, Township 6 North, Range 1 East, Salt Lake Base and Meridian, Weber County, Utah; said strip does not include any part of the dedication which was granted to increase the width of State Highway 39 on said condominium plat.



Ordinance \_\_\_\_\_ Summary

An Ordinance of Weber County vacating a public right-of-way (6300 East Street). Passed, adopted, and ordered published this \_\_\_\_\_ day of \_\_\_\_\_ 2013, by the Weber County Board of Commissioners with Commissioners Bell, Gibson, and Zogmaister voting aye. Copies of the complete ordinance may be reviewed in the Weber County Clerk/Auditor's office at 2380 Washington Blvd, Suite 320, Ogden, Utah.





## Staff Report to the Weber County Commission

Weber County Planning Division

### Synopsis

#### Application Information

**Application Request:** Consideration and / or action on an administrative application, Conditional Use Permit (CUP) 2013-08 (Edgewater Beach Resort PRUD) a request to amend the site plan removing secondary access due to the vacation of 6300 East.

**Agenda Date:** Tuesday, May 21, 2013

**Applicant:** Celtic Bank

**File Number:** CUP 2013-08

#### Property Information

**Approximate Address:** 6350 East Highway 39

**Project Area:** 13.08 Acres

**Zoning:** Commercial Valley Resort Recreation Zone (CVR-1)

**Existing Land Use:** PRUD Development

**Proposed Land Use:** PRUD Development

**Parcel ID:** 20-013-0020 and 20-134-0005

**Township, Range, Section:** T6N, R1E, Section 13

#### Adjacent Land Use

<b>North:</b>	Pineview Reservoir	<b>South:</b>	Residential
<b>East:</b>	Residential	<b>West:</b>	Agriculture

#### Staff Information

**Report Presenter:** Ben Hatfield  
bhatfield@co.weber.ut.us  
801-399-8766

**Report Reviewer:** SW

### Applicable Ordinances

- Weber County Zoning Ordinance Chapter 9C (CVR-1 Zone)
- Weber County Zoning Ordinance Chapter 22C (Conditional Uses)
- Weber County Zoning Ordinance Chapter 18C (Ogden Valley Architectural, Landscape, and Screening Standards)
- Weber County Zoning Ordinance Chapter 22D (Planned Residential Unit Development)
- Weber County Zoning Ordinance Chapter 24 (Parking)
- Weber County Zoning Ordinance Chapter 32B (Ogden Valley Signs)
- Weber County Zoning Ordinance Chapter 39 (Ogden Valley Lighting)
- Weber County Zoning Ordinance Chapter 43 (Ogden Valley Sensitive Lands)

### Type of Decision

**Administrative Decisions:** When the Planning Commission is acting as a land use authority, it is acting in an administrative capacity and has much less discretion. Examples of administrative applications are design reviews, flag lots, and subdivisions. Administrative applications must be approved by the Planning Commission if the application demonstrates compliance with the approval criteria.

### Background

The applicant is requesting an amendment to the existing approved site plan for Edgewater Beach Resort. The Ogden Valley Planning Commission recommended approval of the current design on March 27, 2012. As the development is adjacent to Highway 39, the applicant has been working with the Utah Department of Transportation (UDOT) on improvements and access to Highway 39. There have been concerns with the close proximity of 6300 East and the proposed entrance to the development. The applicant is requesting that the roadway for 6300 East be vacated and the ownership be conveyed (approximately 12 feet) to the adjacent land owner. The home which uses the dirt road may continue to use it as a private driveway.

The proposed plans have only slight modifications which were recommended by the Engineering Division. The major difference with the proposed plans is where the two interior accesses connected to 6300 East. The plans show that near sites 32 and 33 there will now be a hammerhead turn around, instead of the connection to 6300 East. The connection near site 30 will terminate after the parking area and before the trail.

With the removal of secondary access points the Weber Fire District will now require all units to have self contained sprinkling systems. A public hearing regarding the vacation of 6300 East will be held at the Weber County Commission meeting on April 9, 2013 at 10:00 a.m.

### Planning Commission Recommendation

On March 26, 2013 the Ogden Valley Planning Commission recommended approval of the amendment to the design of Edgewater Beach Resort PRUD (CUP 2013-08).

### Summary of County Commission Considerations

As the proposed plans nearly completely reflect the previously approved plans, the planning commission may wish to consider the following questions:

- Does the removal of secondary access points in the proposed amendment significantly alter the proposed plan of development?
- Is this new PRUD design better than the previously approved design?
- Are there any potential negative or detrimental effects that have not been considered and need to be addressed with this conditional use permit approval?
- Does the Planning Commission have other questions that have not been addressed?

### Conformance to the General Plan

The existing site plan was approved in conformance with the Ogden Valley General Plan in 2003. These recently approved amendments reduce the overall density numbers for Ogden Valley and reduce the height and mass of the buildings located closest to the reservoir.

### Conditions of Approval

- Requirements of the Weber County Zoning Ordinance
- Requirements of the Weber County Engineering Division
- Requirements of the Weber County Health Department
- Requirements of the Weber Fire District
- Requirements of the Utah Department of Transportation (UDOT)

### Staff Recommendation

Staff recommends approval of this amended conditional use application subject to the applicant meeting the conditions of approval in this staff report and any other conditions required by the agencies listed in the conditions of approval. This recommendation is based on the following findings:

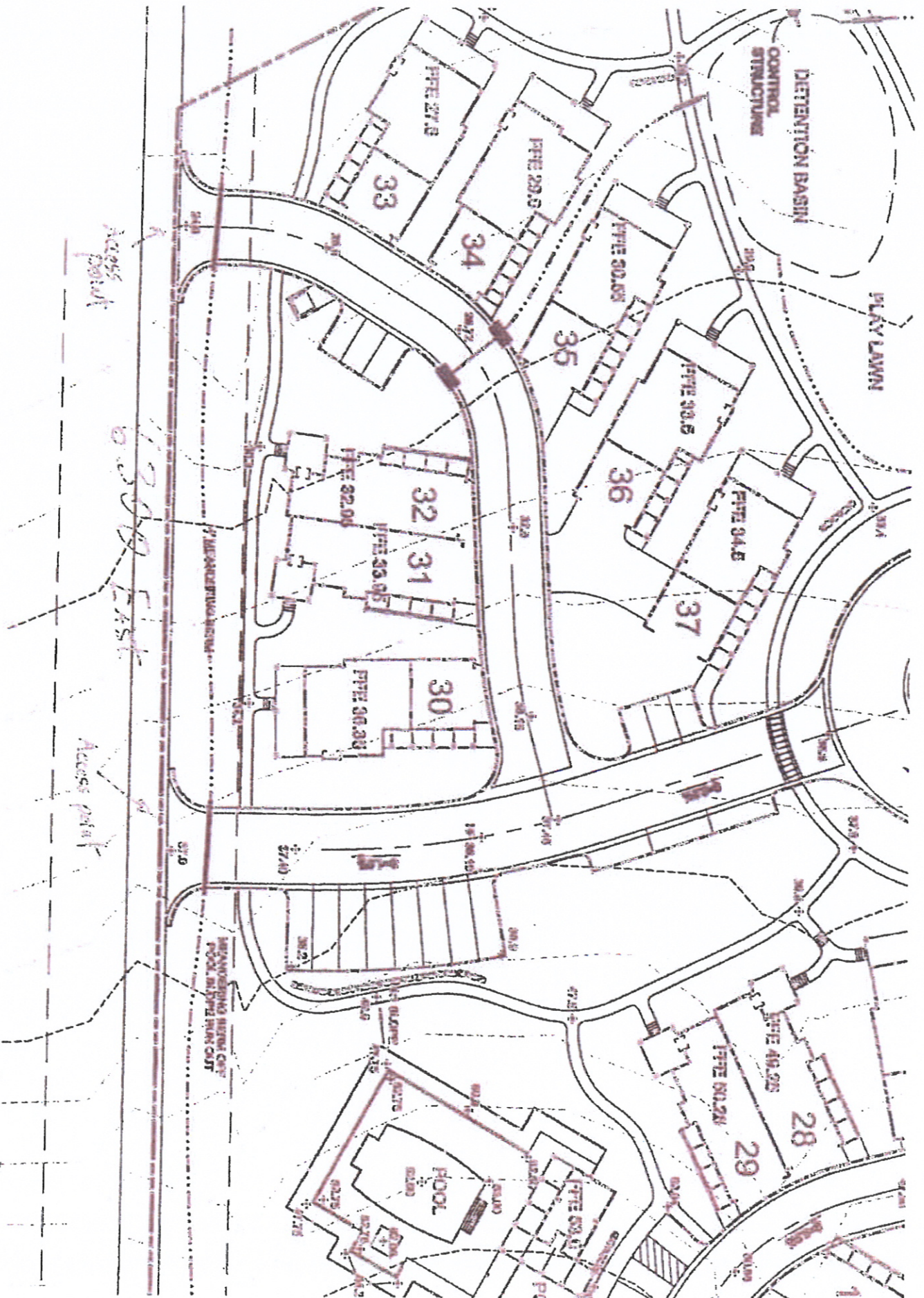
- The proposed use is allowed in the CVR-1 Zone and meets the appropriate site development standards.
- The criteria for issuance of a conditional use permit have been met and the mitigation of potential detrimental effects has been accomplished.
- The proposed PRUD plan is found to have a superior design compared to the existing site plan or a conventional layout of lots.
- Adequate fire suppression can be provided for the development per comments from the Weber Fire District.
- A safer traffic environment will be created on Highway 39 with one access point instead of two.

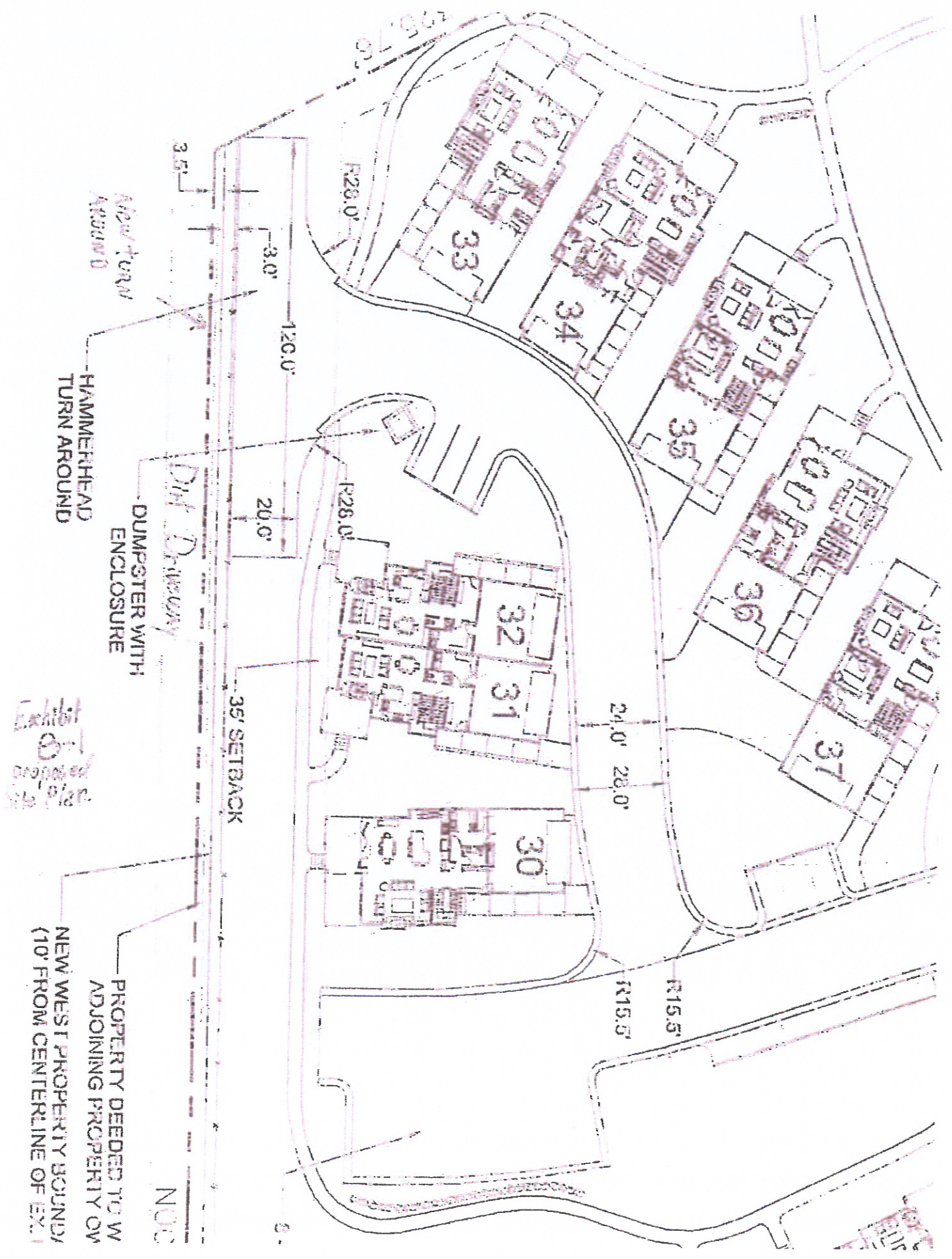
### Exhibits

- A. Existing site plan
- B. New amended site plans (with hammerhead turnaround)

Map 1

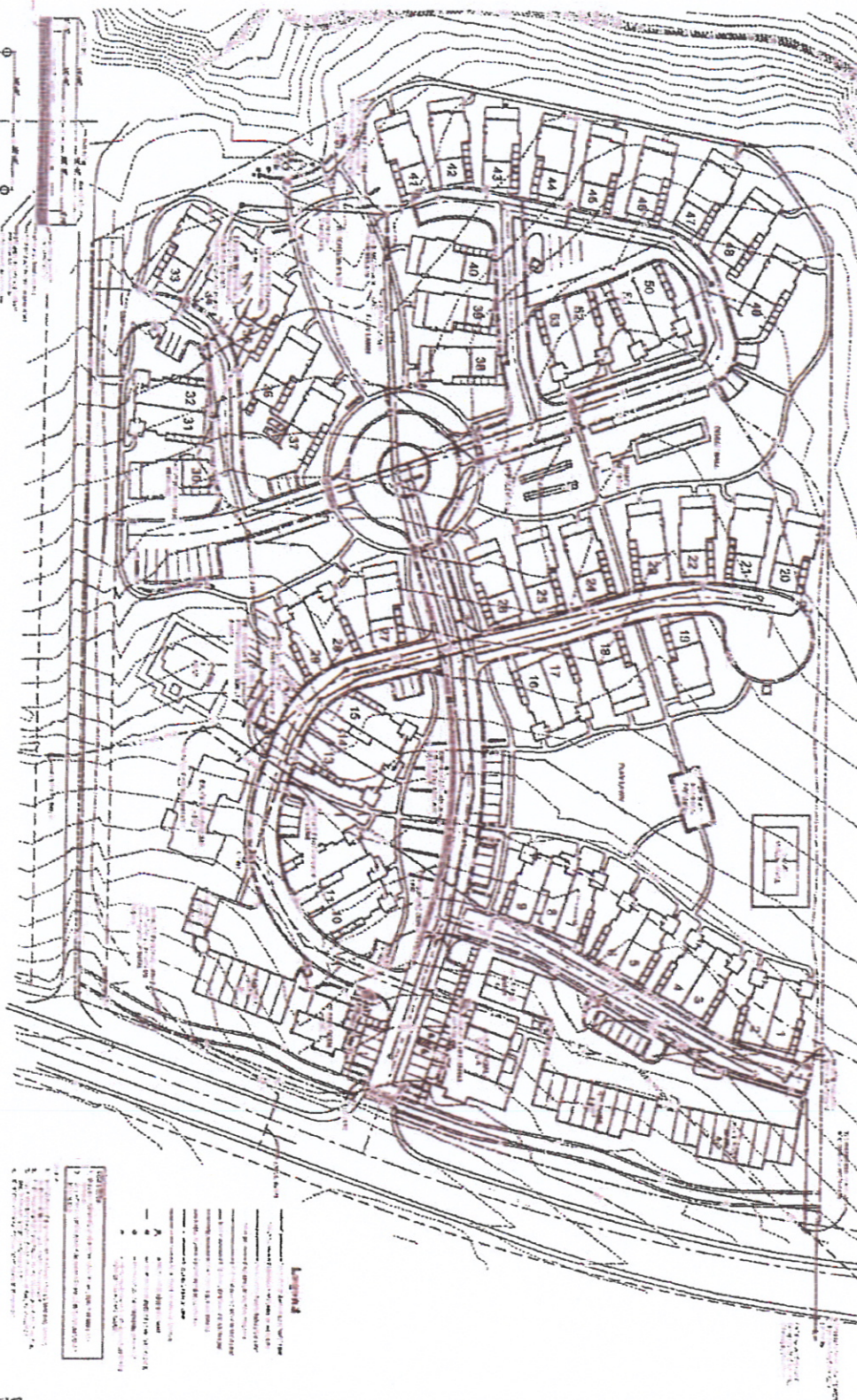






# Edgewater Estates

West County, Utah



SCALE: 1" = 40'

Legend

- 1. Building Footprint
- 2. Road Right of Way
- 3. Road Centerline
- 4. Utility Line
- 5. Easement
- 6. Survey Boundary
- 7. Contour Line
- 8. Spot Elevation
- 9. Proposed Structure
- 10. Proposed Road
- 11. Proposed Utility
- 12. Proposed Easement
- 13. Proposed Survey Boundary
- 14. Proposed Contour Line
- 15. Proposed Spot Elevation

Revised: 4/5/2012

C1.1

UTILITY PLAN



**Reeve & Associates, Inc.**  
 1000 S. 1000 E., SUITE 100, SALT LAKE CITY, UT 84143  
 TEL: 313.444.4444 FAX: 313.444.4444  
 WWW.REVEE-ASSOCIATES.COM

**EDGEWATER ESTATES**  
 UTILITY PLAN  
 MAY 2012, 1748



**BERTOLDI ARCHITECTS**  
 1000 S. 1000 E., SUITE 100, SALT LAKE CITY, UT 84143  
 TEL: 313.444.4444 FAX: 313.444.4444  
 WWW.BERTOLDIARCHITECTS.COM

Exhibit  
B-3

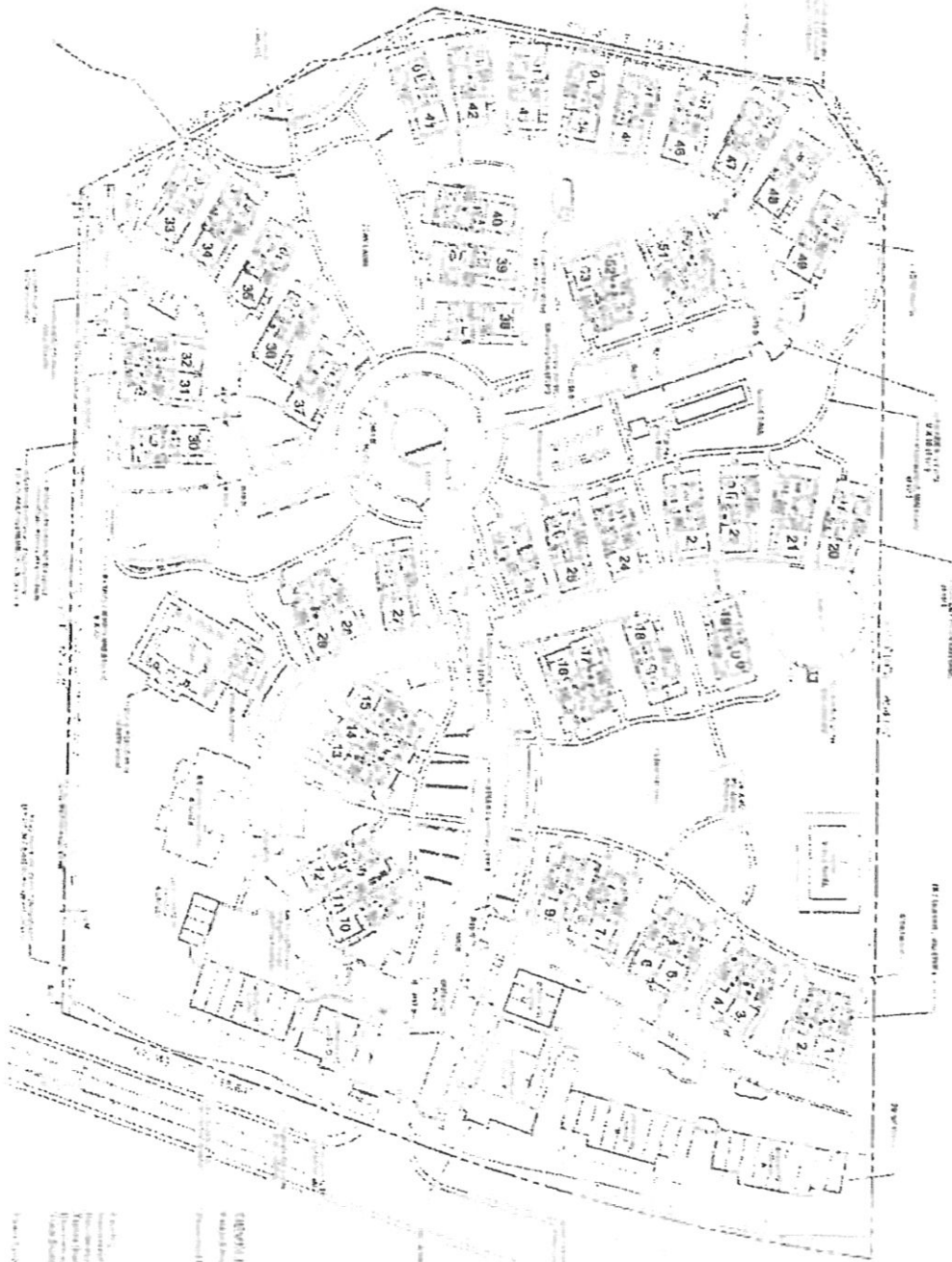


C1.2

**Reeve & Associates, Inc.**

**EDGEWATER ESTATES**  
Drainage & Grading Plan

**BERTOLDI ARCHITECTS**



51.1  
B-1

**LEGEND**

**EXISTING**

EXISTING BUILDINGS

EXISTING PARKING

EXISTING LANDSCAPE

EXISTING UTILITIES

**PROPOSED**

PROPOSED BUILDINGS

PROPOSED PARKING

PROPOSED LANDSCAPE

PROPOSED UTILITIES

# EDGEWATER ESTATES

**PERTOLDI ARCHITECTS**

1000 10TH AVENUE, SUITE 100  
DENVER, COLORADO 80202  
TEL: 303.733.1111  
WWW.PERTOLDIARCHITECTS.COM

51.1



# PHASE 4

### PHASE 3

## PHASE 2

## PHASE 1

NOTES

*[Faint vertical text, likely bleed-through from the reverse side]*

1. *Journal of the American Medical Association*, 1977; 237: 1007-1010.
2. *Journal of the American Medical Association*, 1977; 237: 1007-1010.
3. *Journal of the American Medical Association*, 1977; 237: 1007-1010.
4. *Journal of the American Medical Association*, 1977; 237: 1007-1010.
5. *Journal of the American Medical Association*, 1977; 237: 1007-1010.
6. *Journal of the American Medical Association*, 1977; 237: 1007-1010.
7. *Journal of the American Medical Association*, 1977; 237: 1007-1010.
8. *Journal of the American Medical Association*, 1977; 237: 1007-1010.
9. *Journal of the American Medical Association*, 1977; 237: 1007-1010.
10. *Journal of the American Medical Association*, 1977; 237: 1007-1010.

Exhibit  
B-5

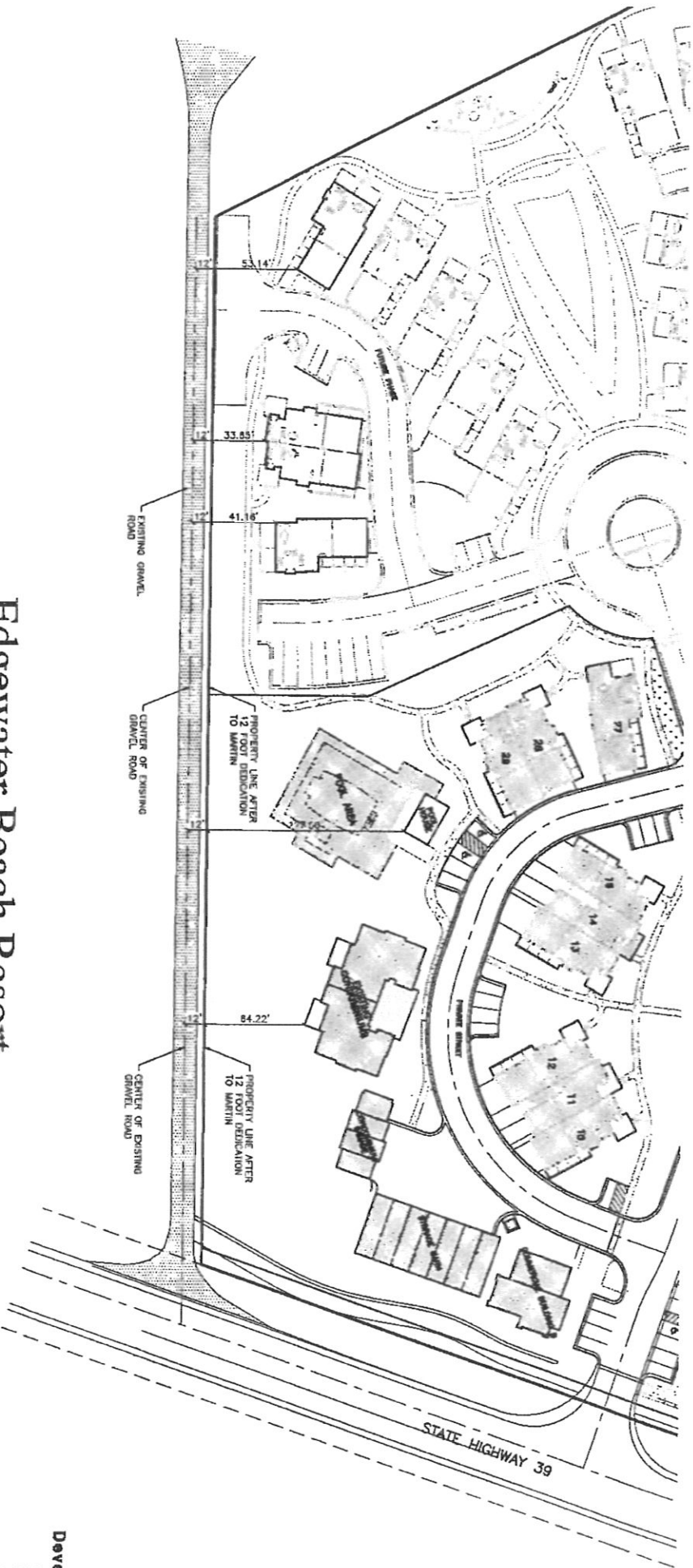
## EDGEWATER ESTATES

4. N° 212. STAR

**BERTOLDI**  
**ARCHITECTS**  
ARCHITECTS PLANNING INTERIOR  
DESIGN AND EXTERIOR DESIGN

51.2

# EXHIBIT H



# Edgewater Beach Resort

Weber County, Utah

**Developed by**  
 Celtic  
 Rees  
 268  
 S. 1st  
 (801)

OF RECORD & ASSOCIATES, INC., 4100 S. HARRISON BLVD., SALT LAKE CITY, UTAH 84143, AND SHALL NOT BE PHOTOGRAPHED, REPRODUCED, OR USED ON ANY PROJECT OTHER THAN THE PROJECT SPECIFICALLY DESCRIBED FOR, WITHOUT THEIR WRITTEN PERMISSION. THE OWNERS AND ENGINEERS OF RECORD & ASSOCIATES, INC. DISCLAIM ANY LIABILITY FOR ANY CHANGES OR MODIFICATIONS MADE TO THESE PLANS.